No. 1149

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

APOSTLES

ON APPEAL.

C. SCHWARTING, Master and Claimant of the German Bark "Robert Rickmers," her Tackle, Apparel and Furniture,

Appellant,

vs.

THE STIMSON MILL COMPANY (A CORPORATION,)

Appellee.

VOL. II.

(Pages 289 to 593, Inclusive.)

Upon Appeal from the United States District Court for the District of Washington, Western Division.

The Filmer Bros. Co. Print, 424 Sansome St., S. F.

(Testimony of F. Walker.)

Q. In excess?

A. Yes, sir; in regard to dimensions, and the excess required on ground tackle.

Q. Are Lloyd's requirements or rules in regard to tensile strength or testing strengths of any kind less than any of these other shipping bureaus or organizations?

A. No, sir. Lloyd's is acknowledged as the highest class throughout the world.

Q. Now, what condition did you find them in?

A. The anchors and cables, the remaining anchors and cables were in first-class condition.

Q. What condition did you find the compressors?

A. The starboard compressor was all right, and the port compressor was slit in two and broken.

Q. To what extent if at all did you examine the port compressor to ascertain the cause of the break?

A. We made a careful examination of the port compressor to determine whether it could be repaired or not, and also what was the cause of its breaking or damage, and whether it would be necessary to renew it.

Q. Were you able to determine the cause?

A. Yes, sir.

Mr. HUGHES.—Now, it is agreed, is it, that the objections I made to Mr. Hill's testimony are considered as being made here to like questions asked of this witness?

(Testimony of F. Walker.)

Mr. ASHTON.—Yes, that is the agreement. We will agree to that.

Q. Could you discover the cause from any outward or inward appearance of the compressor or the compressor block?

A. The compressor and the compressor block had been forced apart by the cable being drawn through the same.

Q. Just explain that, if you think you know, whether from an investigation that you made or from an examination of those broken parts, what the cause was? Just tell us in your own way?

A. From the examination made at the time, I could see that the cable which fits into the compressor—the compressor is a cast-iron block, with a raising and lowering tongue, and this sets on a wooden block with holding bolts going right through the deck and beams—the cable had been lying in this compressor, which exactly fits the links, and if any undue or excessive strain comes on it, it would haul the cable forward and spread the block apart, and that was the way in which the block was split: the cable was hauled forward—the vessel coming back hauled the cable forward, and forced the block apart.

Q. Would any ordinary strain upon the anchor or any usual ordinary strain on ships at anchor have that effect?

A. No, sir; certainly not; as the compressor is made

(Testimony of F. Walker.)

to hold the vessel. The idea of the compressor is, after the vessel is once moored, to take the strain off the windlass after it has lowered the anchor, and then it is all thrown on the compressor, which is made in such a way that the cable cannot slip through it.

Q. If no ordinary strain could have had that effect, how do you account for it?

A. It was an extraordinary strain, due to the elements—an excessive gale of wind at the time, and the anchor holding fast.

Q. Have you any idea as to the force or velocity of a wind which would produce such an effect as that?

A. Why, I don't know what the force or velocity of the wind at the time was.

Mr. HUGHES.—That is not the question. I object to it. The question calls for his opinion, and I object to it on that ground.

Q. Do you think anything less than a maximum storm or hurricane could produce the effects you saw?

Mr. HUGHES.—We object to that as leading.

A. It would require a very severe gale to do such a thing, or a very swift tide.

Q. To what extent are you familiar with vessels of a similar class to the "Robert Rickmers," and with their compressors their ground tackle and equipment.

A. To what extent I am familiar with them?

Q. Yes, sir.

(Testimony of F. Walker.)

A. My whole business has been with them practically all my life.

Q. Well, now, how did this ground tackle on the "Rickmers," and particularly her compressors, and particularly her compressor block—everything—compare with similar tackle on other ships?

A. Very favorably.

Q. Do you know of any way that the compressor and compressor block could have been made safer? Could it have been constructed in any safer manner?

A. No; it was constructed on normal lines. The design is considered as good as can be made; and all vessels are practically constructed on the same line, as far as the compressor is concerned. That is the type of compressor adopted by various shipbuilders throughout the world.

Q. Now, about how many times were you on board the "Rickmers," say after the collision and before you made this report under which she was repaired?

A. Previous to making the first report?

Q. Yes, sir.

A. Why, that first report was made after the first time we went on board of the vessel. We went on board for the purpose of determining the extent of the damage, and making a report on the same.

Q. How many times were you on board the vessels before you made the reports in evidence?

(Testimony of F. Walker.)

A. The reports in evidence are of various dates. The first report was made on December 30th, it was the time we made the report—

Q. (Interrupting.) Do you know what became of the compressor block which broke?

A. (Continuing.) That would be regarded the final report. No, I cannot say what became of the old compressor block. The fragments were around where the men were at work.

Q. What was done with the fragments?

A. They threw them to one side, and the crew disposed of them or perhaps these men disposed of them. They were absolutely valueless as far as intrinsic value was concerned.

Cross-examination.

(By Mr. HUGHES.)

Q. The purpose of the compressor is to take the strain entirely off the windlass?

A. Yes, sir; after the vessel is brought up.

Q. After the vessel is riding at anchor?

A. Yes, sir. The anchor is let go and the windlass is gradually brought up until they have got the required length, and then it is put in the compressor and jammed.

Q. How is it jammed?

A. It is jammed by a hook which passes over the top of the cable.

Q. A hook?

(Testimony of F. Walker.)

A. There is a large iron hook over the compressor, and when the lever is thrown open, the tongue goes down, and the cable goes into its bed, and then the hook is put across the top to hold it there. The formation of the compressor is such that the cable cannot slip out; it is kind of wedged shaped, you understand, and after the link is put in there, the link of the cable is oval, and the hole in the compressor is oval, and there is a slot at each end where the vertical link lies in; two vertical and one horizontal; and the hook goes on top of the horizontal link.

Q. How is it held down firmly so it can't lift any?

A. There is a large hook, as I explained before, goes over this, and in this is a slot which the big hook goes through and passes over the top of the link, and that can't possibly get out. It takes very little to keep it down; the thing is to hold it and keep it from sliding forward; and the formation of the compressor fits the link so it can't pull through. It is a cast-iron block.

Q. You say you think that the parting of the compressor block must have been due to some undue strain?

A. Certainly.

Q. That would necessarily in your opinion be or at least more likely to be a sudden strain or jerk powerful enough to accomplish it, or would it be more likely to occur by a long steady strain?

A. Well, the strain, when the anchor is first let go,

(Testimony of F. Walker.)

the vessel is brought up gradually; there would be no jerk experienced.

Q. I mean coming from the force of wind, storm or tide?

A. By the direct force of wind, a vessel will surge at her cable; she will surge at her cable.

Q. Then you think by the surging and jerking it would be more likely to part it? Or would it be more likely by pulling steadily?

A. It would be the combined efforts of the bringing up and the surging and the wind combined.

Q. When a vessel reached the end of her cable from the force of the wind, then it will jump again and slack her cable?

A. She would not jump any ways quickly through the water, a big vessel like that. If you watch a vessel out here surging, you will see the cable rises up and down.

Q. The more suddenly it bring up on it, the more likely it would be to part the compressor?

A. That is a fact.

Q. Now, you think there must have been a very violent storm to part a compressor which would be in good condition? A. Yes, sir.

Q. And from your inspection, what would you say, on Buford's scale, would be the force of the storm?

A. I could not say the force of a storm which would have that effect; because all vessels, all parts of ves-

(Testimony of F. Walker.)

sels are constructed on what is known as a factor of safety, which is usually four times what is necessary.

Q. Now, here is a case in which the compressor block was broken. Now, assuming that that compressor block was in first-class condition immediately preceding the breaking, and you have already stated that it would have to be a very violent storm; I want your idea of the violence of the storm, expressed as near as you can, according to Buford's scale? You understand it—what that is? A. I understand what you are getting at.

Q. That is, give me some idea of what character of a storm you have in mind as constituting a sufficiently powerful storm to accomplish such a result? Do you think it would be less than eleven on the Buford scale?

A. Well, I would rather not make any statement regarding that simply because I cannot tell exactly what pressure was brought to bear against it.

Q. I know that; but you have aready stated that it would have to be a very violent storm?

A. I said it would take a severe strain. A violent storm or a sudden gust of wind would do it.

Q. But a sudden gust, unless it was a strong gust wouldn't do it? And now, the strength of that gust is measured in terms that are clear to navigators by the Buford scale, isn't it? A. Yes, sir.

Q. You understand what the Buford scale is?

A. Yes, sir; I am perfectly familiar with it.

Q. Now, what in your opinion would be the strength

(Testimony of F. Walker.)

or power of a gust of wind or a gale as the case may be, measured by the Buford scale necessary to part this compressor, if in proper condition?

A. Well, I don't care to give my opinion on that.

Q. This compressor was built with a view of holding a cable when the ship is at anchor in all kinds of weather?

A. Yes, sir; but there is such a great deal to be taken into consideration that I don't care to give an opinion on it.

Q. I say, these compressors are constructed with a view of holding the cable —

A. (Interrupting.) Through almost anything.

Q. (Continuing.) While a ship is at anchor, and in all kinds of weather?

A. They are constructed to hold that vessel where any vessel can be held.

Q. The contemplation of the builders in constructing the compressor was that she may ride at anchor in any kind of a gale?

A. Yes, sir; in any kind of a gale; but there was a tide to be considered in the place this vessel was moored that I don't want to give an opinion. You can turn to the record and find out what the tides was.

Q. What I am trying to get at was to get at your meaning when you spoke of——when you testified that it would be necessarily a violent gale; I want to get some idea, some measure of your idea of the violence of that

(Testimony of F. Walker.)

gale, by having you express it according to the Buford scale, if you can?

A. I don't care to express it that way. The only thing I wish to say is that the cause of the breaking of that compressor was due to a very great strain, more than the compressor was designed to carry.

Q. That is your judgment now?

A. That is my judgment, yes, sir.

Q. The actual expense of repairing the "Rickmers" was in fact far less than you estimated it, wasn't it?

A. I don't remember.

Q. That is all.

On Board the U. S. Cruiser, "New York."
Bremerton, Wash., 11:50 A. M.,
Thursday, Dec. 17, 1903.

Present: Mr. HUGHES, for Libelant.
Mr. ASHTON and Mr. KELLY, for Respondent and Claimant.

Continuation of proceedings pursuant to agreement, as follows, to wit:

Lieutenant POWERS SYMINGTON, a witness for and on behalf of respondent and claimant, having been duly cautioned and sworn, testified:

Q. (Mr. ASHTON.) Please state your name, Lieutenant? A. Powers Symington.

Q. What is your occupation or profession?

A. I am a lieutenant in the United States Navy.

(Testimony of Lieutenant Powers Symington.)

Q. How long have you been a lieutenant in the United States Navy? A. For three years and a half.

Q. What is your present assignment to duty in the navy?

A. I am ordnance officer of the United States ship "New York."

A. Are you a graduate of any naval academy?

A. Yes, sir; the United States naval academy.

Q. At Annapolis? A. Annapolis.

Q. What is your age, Lieutenant?

A. I am 31.

Q. What year did you graduate? A. 1892.

Q. How many years has it been since your graduation? A. Eleven years.

Q. Now have you ever been the navigating officer of any ship since your graduation? A. Yes, sir.

Q. What ships?

A. United States S. S. "Bennington."

Q. Any others?

A. The United States "Fortune" tug.

Q. You have had experience necessarily, I assume, in the anchoring of vessels in open roadsteads?

A. Yes, sir.

Q. And also in harbors?

A. Yes, sir.

Q. And in the navigating of vessels in every respect?

A. Yes, sir.

Q. I call your attention here to United States Coast and Geodetic Survey chart of Shilshoal Bay on Puget

(Testimony of Lieutenant Powers Symington.)

Sound, No. 6439, and ask you to look at it and state whether or not that is recognized in the profession or in the maritime world as an official chart?

A. Yes, sir; it is.

Q. Of the United States Government?

A. Yes, sir.

Q. I wish you would take your dividers and parallel rules and proceed in such a way as you think proper to locate thereon the position of a vessel bearing north twenty-nine degrees east true, and distant one and a quarter miles, nautical, from West Point?

A. I have not a pair of parallel rulers, but I can do it very closely without. (Marking on chart.) That is approximately it as near as I can get it without parallel rulers.

Q. Put "S. S." at the place indicated?

A. Yes. (Witness marks as requested.)

Q. Now, locate, if you please, the position of a vessel north thirty-eight degrees true and distant seven-eighths of a nautical mile from West Point? (Witness does as requested.) Will you please mark that with the letters "C. S."? (Witness marks as requested.) What have you put to show the exact point, a dot?

A. A dot with a circle around it.

Q. Now, please locate the position of a vessel north twenty-three degrees east true and distant three-quarters of a nautical mile from West Point?

A. All right, sir.

(Testimony of Lieutenant Powers Symington.)

Q. Mark that, if you please, "M. S." (Witness marks as requested.)

Mr. ASHTON.—I am having these marked with these letters, Mr. Hughes, the "M." in this case being intended to mean the "Mildred," and the "S," the initial of the witness, and the others accordingly.

Q. Now, if you please, locate another vessel north thirty-three degrees true and three-quarters of a mile distant from West Point. Mark that, if you please, "R. S.," intending to mean "Rickmers" by "Symington."

A. All right, sir.

Q. Now, then, you say that is a regular Government chart, Lieutenant Symington?

A. Yes, sir; a coast survey chart.

Mr. ASHTON.—There is no question about that, is there, Mr. Hughes?

Mr. HUGHES.—Oh, I do not make any question about that being a Government chart.

Mr. ASHTON.—Then we offer the chart in evidence in order that it may be used in connection with these hypothetical questions.

(Chart referred to offered in evidence, marked as Claimant's Exhibit No. 10, for identification, and returned and filed herewith.)

Q. Now, Lieutenant Symington, assume that the German bark "Robert Rickmers," twenty-two hundred tons, leaves her anchorage at Port Townsend on the morning

(Testimony of Lieutenant Powers Symington.)

of December 25, 1901, and proceeds under tow of the tug "Tacoma," on her way up Sound to Tacoma; the weather is clear and the wind is light from the south'ard. After noon the wind increases and the towboat captain signals that he is about to take the "Rickmers" to a temporary anchorage in Shilshoal Bay. The ship is taken to leeward of West Point to an anchorage which bears from West Point light north thirty-three degrees east true, and distant three-quarters of a nautical mile. It is extremely high tide at Shilshoal Bay at 2:48 P. M., and extremely low tide at 10:41 P. M., on the day in question. The "Rickmers" ground tackle is as follows: her starboard anchor, weighs with stock, 5124 pounds; her port anchor weighs, with stock, 4,850 pounds, and each of her anchor chains are of the following dimensions: each are stud link chains of total length of 135 fathoms, weight of sixty-three hundred weight; length of link twelve and three-quarters inches; breadth of link seven and three-sixteenths; size or diameter of link two and one-sixteenth; breaking strain in each length of sixteen fathoms, one hundred and seven and one-tenth tons; tensile strength seventy-six and five-tenths tons; her anchors and chains are certified by Lloyds, and she is equipped with the usual appliances in the way of capstan, compressors, etc. Lying in the bay at the time are three schooners, located as follows: the "Corona," a three-masted topsail schooner of 394 tons, was at an anchorage which bore from West Point light north thirty-eight degrees east true and distant

(Testimony of Lieutenant Powers Symington.)

seven-eights of a mile, nautical; the "Mildred," a three-masted topsail schooner of 411 tons, was at an anchorage which bore from West Point light north twenty-three degrees east true and distant three-quarters of a mile, nautical; the "Stimson," a four-masted topsail schooner was at an anchorage which bore from West Point light north twenty-nine degrees east true and distant one and one-quarter miles nautical; the "Stimson" is a schooner of 701 tons. The "Rickmers" was brought to her anchorage about four o'clock P. M., in fourteen fathoms of water, amidships, dropped her port anchor and paid out forty-five fathoms of chain. It is the custom of Puget Sound ports that the towboat captains in docking vessels in tow up and down Sound assumes all the duties of pilot. The captain of the towboat in this case was a licensed pilot and indicated the anchorage to the captain of the "Rickmers," who was a stranger to the waters, this being his first voyage to Puget Sound; under those conditions and circumstances did the "Rickmers" display good seamanship and judgment in anchoring in the place and manner indicated?

Mr. HUGHES.—I object to the question as not a proper hypothetical question, not based upon facts correctly stated from the evidence taken in the case and for the further reason that it is not the proper subject for hypothetical questions.

A. It was perfectly proper and seamanlike procedure

(Testimony of Lieutenant Powers Symington.)

to anchor at that place and at that time as specified in the question.

Q. You mean perfectly right and seamanlike on the part of whom?

A. On the part of the captain of the ship.

Q. Of the "Rickmers"?

A. The captain of the "Rickmers."

Q. Please give your reasons fully for that answer, Lieutenant?

Mr. HUGHES.—Same objection.

A. The chart shows that that is good anchorage to be used at any time and the captain had a perfect right to anchor there unless there were some local reasons why he should not do so, and if he anchored there on the advice of the Sound pilot, the supposition would be that there were no local objections to anchoring there apart from what would appear on the chart, and the chart shows that would be a good place to anchor.

Q. Now, Lieutenant, assume all the conditions of the first question which was propounded to you, and in addition thereto the following: The "Rickmers" in coming to her anchorage, split the foundation block—wooden—of her port compressor and ten or fifteen fathoms of her port chain runs away. The tugboat which is standing by passes a hawser and hauls her back to her former anchorage, or perhaps to one a little more in shore. The "Rickmers" while this is being done overhauls the slack of her port chain and lies to her port anchor, having forty

(Testimony of Lieutenant Powers Symington.)

fathoms of port chain out and having rigged a relieving tackle thereon by using two full blocks, each having a two inch in diameter hook with a rope rove through them, and stoppered on to the chain and foremast. Her starboard anchor is dropped also, and thirty fathoms of her starboard chain is paid out; under these conditions and circumstances were those precautions sufficient and seamanlike and was the relieving tackle described sufficient and seamanlike?

Mr. HUGHES.—Same objection as before.

A. They were.

Q. Please give your reasons for your answer.

Mr. HUGHES.—Same objection.

A. Under conditions of a light breeze blowing the dropping of two anchors and paying out of thirty and forty-five fathoms of chain on those two anchors would be ample to hold any ship that is well founded in ground tackle.

Q. Lieutenant, you are one of the watch officers now, of this battleship "New York," are you not?

A. No, sir. I am the ordnance officer instead of watch.

Q. You have served a watch officer.

A. Yes, sir; on board the ship for two years.

Q. On board this ship? A. Yes, but not now.

Q. This is the battleship "New York" where we are taking this testimony, is it?

A. The cruiser "New York," not battleship, yes, sir.

(Testimony of Lieutenant Powers Symington.)

Q. Now, Lieutenant, assuming the conditions of the first and second questions, was it good seamanship under the circumstances of wind, weather and anchorage for the "Rickmers" to lie in this temporary berth with two anchors out, having thirty fathoms of chain to starboard and forty fathoms of chain on her port anchor, stoppered as described?

Mr. HUGHES.—Same objection.

A. I have given that in the previous question; it was good seamanship under the conditions that were described in the first questions.

Q. Lieutenant, assume the conditions of the first, second and third questions and in addition thereto, the following: Five hours have elapsed and it is about ten o'clock P. M.; the wind is from south southwest veering a point or two each way and is blowing in gusts up to ten and eleven on the Beaufort scale. The hook on one of the blocks of the relieving tackle is carried away and the ship begins to drag. The starboard chain is payed out as rapidly as possible, but the anchor does not hold and another and similar relieving tackle is rigged to the port chain, when it is discovered that the chain has parted and the anchor is lost. The "Rickmers" passed off to leeward, gets athwart the hawser of the "Mildred," carrying away the "Mildred's" jib-boom, gets clear and passed to leeward of the "Mildred's" port side until she fouls the "Stimson's" starboard bow; under the conditions of

(Testimony of Lieutenant Powers Symington.)

wind and weather do those facts show any want of care and seamanship on the part of the "Rickmers"?

Mr. HUGHES.—Same objection as before.

A. No, I do not think so. I do not think they do.

Q. Please give your reasons fully for that answer.

Mr. HUGHES.—Same objection.

A. The reason being that having anchored in a good place, if the wind came up—freshened—and effort was made to pay out more chain, it was not bad seamanship if the anchor carried away—if the anchor chain would carry way; the further condition there, as I understand it was that the anchor had carried away—that the port anchor chain had carried away, that they tried the chain on the port side and they found the anchor had been carried away?

Q. That is right?

A. The wind rose and an effort was made to further secure the ship, make it more safe, and it was found that an accident had happened, and in my opinion the proper precautions were taken there.

Q. Mr. Symington, assume all the conditions of the first, second, third and fourth questions, and in addition thereto, the follows: The night is clear and without fog, but the sky is overcast and there is occasional rain; all the vessels are properly equipped with lights, etc., the "Rickmers" drags her anchors not later than eleven o'clock P. M., gets into collision with the "Mildred" as described, comes down on to the "Stimson"; from the time

(Testimony of Lieutenant Powers Symington.)

the "Rickmers" first began to drag until she came into collision with the "Stimson," not less than a half hour elapses. The "Stimson" was lying at one anchor on 105 fathoms of cable; under those circumstances of wind and weather and anchorage was it within the power of the "Stimson" to take steps to avert the collision?

Mr. HUGHES.—Same objection.

A. It is always possible to take some steps, you can't say they would have been successful steps, but more chain might have been—sail might have been made on one end or the other of the ship to sheer one side or the other. I do not know that it would have had the desired result, but some effort might have been made, I think should have been.

Q. Supposing she had hoisted her staysail?

Mr. HUGHES.—Same objection.

A. I say hoisting the sail one end of the other would sheer the vessel to one side—one way or the other. Hoist a staysail or a spanker, or if there was any tide you might have put her helm over and sheered her that way.

Q. Assuming the tide was flooding and had been flooding for a couple of hours, what have you to say?

Mr. HUGHES.—Same objection as before.

A. I am not familiar enough with the currents there to answer that question—not acquainted enough with the tidal current.

(Testimony of Lieutenant Powers Symington.)

Q. Assuming the tide runs three miles an hour at that point?

Mr. HUGHES.—Same objection.

A. It would seem to be feasible to sheer the ship one way or the other.

Q. Under the facts and circumstances assumed in questions already asked, would you say that the "Rickmers" was negligent in not paying out more cable when forward of the "Mildred" and "Corona"; if so, why, if not, why? Please answer fully and give your reasons.

Mr. HUGHES.—Same objection as before, and further that it is incompetent, calling for the conclusion and opinion of the witness without proper foundation laid.

A. I think the "Rickmers" had plenty of chain out under the original first question, but when the wind freshened he ought to have paid out more chain, and she apparently made an effort to do so at ten o'clock that night. I do not know that she took this precaution in proper time, or not, but she apparently made an effort to pay out more chain when the wind freshened, which was a proper proceeding.

Q. Assuming the velocity of the wind and the position of the vessel and the management and seamanship of the master and crew of the "Rickmers" to have been covered by the questions already asked, what further, if anything could have been done in the usual

(Testimony of Lieutenant Powers Symington.)

course of navigation and without damage to the schooners astern for the purpose of rendering the ship less liable to drag?

Mr. HUGHES.—Same objection.

A. She could have paid out more chain when she originally anchored, but under the conditions of the first question, it would not be necessary, she would not be called upon to do so. She could not do anything except take a longer scope of chain, that is all she could do.

Q. Later on would it have been prudent to have taken a longer scope of chain in view of the "Mildred" and "Corona" being off her stern?

Mr. HUGHES.—Same objection.

A. I should think, so, yes.

Q. You would not have advised a much longer scope of chain, would you, Lieutenant?

Mr. HUGHES.—Same objection and further that it is leading.

A. Yes, I think I should have advised a longer scope in a case of that kind when the wind freshened.

Q. When the wind is blowing ten and eleven on the Beaufort scale, what velocity does it indicate in miles per hour?

A. Nautical miles per hour from 56 to 65 miles.

Q. (Mr. HUGHES.) Fifty-six miles at ten and sixty-five miles at 11?

(Testimony of Lieutenant Powers Symington.)

A. Fifty-six at ten and 65 at eleven.

Q. (Mr. ASHTON.) What is considered hurricane velocity? A. Seventy-eight miles or more.

Q. And that of a heavy storm?

A. A heavy storm is not a nautical expression.

Q. Well, a storm.

A. A storm gale is 48 miles an hour.

(Testimony of witness closed.)

And thereupon, an adjournment was taken to go to Seattle to take the testimony of Lieutenant Lopez.

Seattle, Washington, 3:30 P. M.
Thursday, December 17th, 1903.

Present: Mr. HUGHES, for Libelant.
Mr. ASHTON and Mr. KELLY, for Respondent and Claimant.

Continuation of proceedings pursuant to adjournment as follows, to wit:

Lieutenant R. F. LOPEZ, a witness for and on behalf of respondent and claimant, being first duly cautioned and sworn, testified:

Q. (Mr. ASHTON.) What is your profession?

A. Naval officer.

Q. How long have you been a naval officer?

A. Twenty years.

Q. Are you a graduate of any naval institution or academy? A. The United States Naval Academy.

Q. At Annapolis? A. At Annapolis.

(Testimony of Lieutenant R. F. Lopez.)

Q. How many years have you had practical experience at sea? A. Twenty years.

Q. How much of that time in a general way have you had experience in the navigation of vessels?

A. Seven years of that time—about 6 or 7 years.

Q. Been on sailing vessels as well as steam.

A. Yes, sir. Three years in sailing vessels.

Q. Warships, I presume?

A. Yes, sir. I was in the New York schoolship for three years instructing for the Merchant Marine.

Q. What particular position or assignment to duty are you occupying now?

A. I am navigator of the "New York."

Q. Navigating officer of the "New York."

A. Of the "New York."

Q. Of the United States Cruiser "New York"?

A. Yes, sir.

Q. How long have you served as navigating officer of any of the ships of the navy?

A. That is what I was saying—about 6 or 7 years.

Q. Now, Lieutenant, I wish you would take this official chart which I hand you of the United States States Coast and Geodetic Survey, No. 6439, being a chart of Shilshoal Bay here on Puget Sound, and please locate thereon, first the position of a vessel bearing north thirty-three degrees east true and distant three-quarters of a nautical mile from West Point. Now, please mark the vessel which you have so located "R.

(Testimony of Lieutenant R. F. Lopez.)

L." Now, please locate another vessel bearing north thirty-eight degrees east true and distant seven-eighths of a nautical mile from West Point. Mark that, if you please, "C. L." Now, kindly locate the position of another vessel bearing north twenty-three degrees east true and distant three-quarters of a nautical mile from West Point. Mark that, if you please, "M. L." Now, another vessel bearing north twenty-nine degrees east true and distant one and one-quarter nautical miles from West Point. Mark that, if you please, "S. L." You have now located the position of these four vessels to which I have referred, have you, Lieutenant?

A. Yes.

Mr. ASHTON.—We will offer that chart in evidence and ask that it be received and filed as Respondent's and Claimant's Exhibit No. 11.

Mr. HUGHES.—Objected to as immaterial and for the reason that no proper foundation has been laid for its introduction in evidence in this case.

(Chart referred to, offered in evidence, marked for identification as Claimant's Exhibit No. 11 and returned and filed herewith.)

Q. Lieutenant, that is a regular official chart, is it?

A. Yes.

Q. As used by the naval and other navigating officers? A. Yes, sir, the same chart.

Q. The only chart in use in this country as far as you know—American chart?

(Testimony of Lieutenant R. F. Lopez.)

A. It is the one we use in the navy.

Q. It is the one? A. Yes.

Mr. ASHTON.—We reoffer it at this time.

Mr. HUGHES.—Same objection as before.

Q. Now, Lieutenant, assume that the German bark "Robert Rickmers," 2200 tons, leaves her anchorage at Port Townsend on the morning of December 25, 1901, and proceeds under tow of the tug "Tacoma" on her way up Sound to Tacoma; the weather is clear and the wind is light from the south'ard. Afternoon the wind increases and the towboat captain signals that he is about to take the "Rickmers" to a temporary anchorage in Shilshoal Bay. The ship is taken to leeward of West Point to an anchorage which bears from West Point light north thirty-three degrees east true and distant three-quarters of a nautical mile, the same being the place where I asked you to locate a vessel which you have marked "R. L." It is extreme high tide at Shilshoal Bay at 2:48 P. M., and extreme low tide at 10:41 P. M., on the day in question. The "Rickmers" ground tackle is as follows: Her starboard anchors weighs, with stock 5,124 pounds, her port anchor weighs, with stock, 4,850 pounds, and each of her anchor chains are of the following dimensions: each are stud link chains of a total length of 135 fathoms, weight of 6,300 weight; length of link twelve and three-quarters inches; breadth of link seven and three-sixteenths inches; size or diameter of link two and one-sixteenth; breaking strain

(Testimony of Lieutenant R. F. Lopez.)

in each link of fifteen fathoms, one hundred and seven and one-tenth tons; tensile strength seventy-six and five-tenths tons; her anchors and chains are certified by Lloyd's and she is equipped with the usual appliances in the way of capstan, compressor, etc. Lying in the bay at the time are three schooners located as follows: the "Corona," a three-masted topsail schooner of three hundred and ninety-four tons, was at an anchorage which bore from West Point light north thirty-eight degrees east true and distant seven-eighths of a mile nautical, the same being the point which you have marked "C. L." The "Mildred," a three-masted topsail schooner of four hundred and eleven tons, was at an anchorage which bore from West Point light north twenty-three degrees east true and distant three-quarters of a nautical mile; I refer to the point which you have marked "M. L." The "Stimson," a four-masted topsail schooner, was at an anchorage which bore from West Point north twenty-nine degrees east true and distant one and one-quarter miles nautical; I refer to the point which you have marked "S. L." The "Stimson" is a schooner of seven hundred and one tons. The "Rickmers" was brought to her anchorage about four o'clock P. M., in fourteen fathoms of water amidships, dropped her port anchor and paid out forty-five fathoms of chain. It is the custom of Puget Sound ports that the towboat's captain in taking vessels in tow up and down Sound assumes, also, the duties of pilot. The

(Testimony of Lieutenant R. F. Lopez.)

captain of the towboat in this case was a licensed pilot and indicated the anchorage to the captain of the "Rickmers," who was a stranger to those waters, this being his first voyage to Puget Sound; under those conditions and circumstance did the "Rickmers" display good seamanship and judgment in anchoring in the place and manner indicated?

Mr. HUGHES.—Objected to for the following reasons: 1st, the question is not a proper hypothetical question; second, it is not a proper subject for a hypothetical question; 3d, that no proper foundation has been laid for any hypothetical questions; and the facts set forth in the question are not based upon facts proven in the evidence nor consistent with them, and is therefore incompetent and immaterial.

A. Yes.

Q. Please give your reasons fully for that answer.

Mr. HUGHES.—Same objection and further that the question calls for an argumentative answer.

A. The man being a licensed pilot had a perfect right to show where the vessel should anchor, and the captain of the vessel was right in taking his advice.

Q. Lieutenant, assume all the conditions of the first question and in addition thereto the following: The "Rickmers" in coming to her anchorage split the foundation of her port compressor, the same being a wooden block, and ten or fifteen fathoms of her port chains runs

(Testimony of Lieutenant R. F. Lopez.)

away; the tugboat which is standing by passes a hawser and hauls her back to her former anchorage, or perhaps to one a little more in shore. The "Rickmers," while this is being done overhauls the slack of her port chain and lies to her port anchor, having forty fathoms of port chain out and having rigged a relieving tackle thereon by using two full blocks, each having a two-inch in diameter hook with a rope rove through them and stoppered on the chain and foremast. Her starboard anchor is dropped, also, and thirty fathoms of her starboard chain is paid out; under these conditions and circumstances were those precautions sufficient and seamanlike and was the relieving tackle described, sufficient and seamanlike?

Mr. HUGHES.—Same objection as before.

A. Yes.

Q. Please state your reasons fully for so answering.

Mr. HUGHES.—Same objection.

A. The reasons would be that there was sufficient chain out to hold her under the conditions on the two anchors.

Q. Lieutenant, assuming the conditions of the first and second questions, was it good seamanship under the circumstances of wind, weather and anchorage, for the "Rickmers" to lay in this temporary berth with two anchors out, having thirty fathoms of chain to starboard and forty fathoms of chain on her port anchor, stoppered as described.

(Testimony of Lieutenant R. F. Lopez.)

Mr. HUGHES.—Same objection.

A. Yes.

Q. Now, assume the conditions of the first, second and third questions which I have just asked you, and in addition thereto, the following: Five hours have elapsed and it is about ten o'clock P. M., the wind is from south, southwest, veering a point or two each way and is blowing in gusts up to ten and eleven on the Beaufort scale. The hook on one of the blocks of the relieving tackle is carried away and the ship begins to drag. The starboard chain is paid out as rapidly as possible, but the anchor does not hold and another and similar relieving tackle is rigged to the port chain when it is discovered that the chain has parted and the anchor is lost. The "Rickmers" passed off to leeward, gets athwart the hawser of the "Mildred," carrying away the "Mildred's" jib-boom, gets clear and passes to leeward on the "Mildred's" port side until she fouls the "Stimson's" starboard bow; under the conditions of wind and weather do those facts show any want of care or seamanship on the part of the "Rickmers"?

Mr. HUGHES.—Same objection.

A. No.

Q. Please give your reasons.

Mr. HUGHES.—Same objection.

A. Well, I would say she had done all that she could under the circumstances, as far as seamanship goes.

Q. Lieutenant, assume all the conditions of the first,

(Testimony of Lieutenant R. F. Lopez.)

second, third and fourth questions and in addition thereto the following: The night is clear and without fog, but the sky is overcast and there is occasional rain. All the vessels are properly equipped with lights, etc. The "Rickmers" drags her anchors not later than eleven o'clock P. M., gets into collision with the "Mildred" as described, and comes down on to the "Stimson." From the time the "Rickmers" has first begun to drag until she came into collision with the "Stimson," not less than a half hour elapsed. The "Stimson" was lying at one anchor on one hundred and five fathoms of cable; under those circumstances of wind, weather and anchorage was it within the power of the "Stimson" to take steps to avert the collision?

Mr. HUGHES.—Same objection.

A. She might have taken some steps, but I do not think she could have done anything. There were certain things she might do, but it is a question whether it would have cleared her or not.

Q. What steps might she have taken or could she have taken?

Mr. HUGHES.—Same objection.

A. If the tide was running strong she might have used her helm to give her a sheer. She might also have hoisted her head sail.

Q. Now, that is all on the basis that she had a proper lookout and knew what was coming?

(Testimony of Lieutenant R. F. Lopez.)

Mr. HUGHES.—Same objection.

A. Yes; which I take for granted in answering the questions.

Q. Under the facts and circumstances assumed in the questions already asked you, would you say that the "Rickmers" was negligent in not paying out more cable when forward of the "Mildred" and "Corona"; if so, why, if not, why? Please answer fully and give your reasons.

Mr. HUGHES.—Same objection as before.

A. That would depend on the distance from the other vessel—her distance from the other vessels, which I do not know at present. I have not taken these measurements.

Q. Please arrive at the distance that the "Corona" and the "Mildred" were from the "Rickmers" by scaling the chart.

A. It would be about seven hundred and fifty feet.

Q. That each was from the "Rickmers"?

A. Yes; about an eighth—that is, the "Rickmers" was that distance from the "Mildred."

Q. That the "Rickmers" was from the "Mildred"?

A. That the "Rickmers" was from the "Mildred," yes.

Q. Is that the stern of the "Mildred"?

A. No; that is the position that I have indicated upon the chart here.

(Testimony of Lieutenant R. F. Lopez.)

Q. Now, you had better let me tell you there, assuming that the "Rickmers" was two hundred and sixty-seven feet in length; would that cut any figure in the distance?

A. They are at anchor, it would depend on this—you have got the position here, in all probability the position from the compass where the bearing was taken.

Q. Well, give me the distance according to the compass bearing and scale.

A. It would be seven hundred and fifty feet. In all probability that would be about three-quarters of her length that would be astern.

Q. Now, what distance was the "Corona" away?

A. From the "Rickmers"?

Q. From the "Rickmers"?

A. I should say, as well as I can measure on here (referring to chart), a little more than an eighth.

Q. A little more than an eighth of a mile.

A. Yes; about, say, three-sixteenths.

Q. That would be how many feet away?

A. Eleven hundred and twenty-five feet, say.

Q. Now, assume that the "Rickmers" had out the length of cable which I have referred to in the first hypothetical question put to you, and that she was 267 feet in length; and that the "Mildred" had out 65 fathoms of cable, and the "Corona" about 60 fathoms; what have you to say as to whether or not the "Rickmers" when she so first came to anchor should have allowed a greater scope of cable?

(Testimony of Lieutenant R. F. Lopez.)

Mr. HUGHES.—Same objection.

A. When she first came to anchor?

Q. When she first came to anchor and before she commenced to drag. Would it have been good seamanship in that berth with those schooners at her stern to allow more scope?

Mr. HUGHES.—Same objection.

A. No.

Q. Why?

Mr. HUGHES.—Same objection.

A. Because she was in as close proximity as it was prudent to get at the time.

Q. Now, after she commenced to drag was she negligent in paying out more cable?

Mr. HUGHES.—Same objection.

A. You mean by that was it paid out?

Q. Well, assume that she did pay out more; was she negligent in so doing when she commenced to drag?

A. No; she would have to do that. The only way of stopping her dragging would be to pay out. She was right in paying out under the conditions when she began to drag.

Q. In other words, she was justified in taking chances when the trouble arose? A. Yes.

Q. But not before that?

A. No; not before that.

Q. Now, Lieutenant, assuming the velocity of the

(Testimony of Lieutenant R. F. Lopez.)

wind and the positions of the vessels and management and seamanship of the master and crew of the "Rickmers" to have been covered by the questions already asked, what further, if anything, could they have done in the usual course of navigation and without damage to the schooners astern for the purpose of rendering their ship less liable to drag?

Mr. HUGHES.—Same objection as before.

A. I do not know of anything else they could have done.

Q. When the wind is blowing ten and eleven on the Beaufort scale what velocity does it indicate in miles per hour?

A. Well, as I remember it, it is about 65 miles.

Q. What is considered hurricane velocity?

A. That is, the limit of hurricane velocity on the Beaufort scale?

Q. No; the range of hurricane velocity?

A. That would be from ten to twelve, which would go from sixty miles to ninety miles per hour according to Beaufort, as I recollect it.

Cross-examination.

Q. (Mr. HUGHES.) Lieutenant, if you assumed that the "Rickmers" is at the place indicated on the map which you have identified here at the circle with the letters "R.L.", and the wind was blowing south-southwest and veering only one or two points, how would you account for the "Rickmers" drifting upon the schooner

(Testimony of Lieutenant R. F. Lopez.)

"Mildred," located as you have located her upon this chart at the point indicated by the letters "M. L."?

A. I could on account for it by the current and the shifting of the wind two points—well, the wind was south-southwest, you say?

Q. From south to south-southwest.

A. Is that the true direction? This compass is with a variation, so we expect that the true compass is the other way.

Q. The directions are given nautical.

A. Yes; the directions are given nautical. Well, if it would shift two points with the current it might take her on the "Mildred."

Q. So as to collide with the jib boom of the "Mildred" if their positions were as located upon this chart.

A. Without dragging at all, you mean?

Q. No; if she dragged.

A. Yes, if she dragged, if the wind would shift her two points and put her around in the direction of the "Mildred," it would put her just in that direction.

Q. What direction would the wind have to be coming to drive her down on the "Mildred"?

A. Have to be coming across here (showing on chart).

Q. Give us the points of the compass.

A. Well, we will say about—is that wind alone?

Q. Yes?

A. That would be east, southeast magnetic, about, or

(Testimony of Lieutenant R. F. Lopez.)

southeast—it would be about southeast—the wind came southeast true.

Q. Then to be carried from her position as located upon this chart the "Rickmers" would have to be driven by a wind from the southeast in order to strike the jib-boom of the "Mildred" as located upon this chart?

A. Yes; that is that would be in the direct line; a point each way would probably have the same effect.

Q. A point each way might— A. Yes, it might.

Q. —— Influenced by the waves and current.

A. By the current, yes, would set her that way.

Q. Well, assuming that the wind and waves were such as to carry the "Rickmers" from the point indicated on this chart so as to strike the jib-boom of the "Mildred" at the point indicated on this chart, would the same wind and current take the "Rickmers" on so as to collide with the "Stimson" as located upon this chart?

A. No; it would not.

Q. Then, if, as a matter of fact, the "Rickmers" after dragging struck the jib-boom of the "Mildred" and after extricating herself—

A. Let me hear that last question read. (Question beginning, "Well, assume, then, that the wind and waves were such as to carry the 'Rickmers' from the point indicated on this chart," etc., read to the witness.) No; not at that time—at that particular time. There might be a change afterward, of course, but at that particular time that she collided with the "Mildred" at that

(Testimony of Lieutenant R. F. Lopez.)

identical time, the current would naturally set her down in that direction, don't you see? And the wind might bring her around here and over there (showing on chart) for a time, and then if she shifted back here the current would take her in that direction (showing on chart).

Q. The current would not be liable to change, would it?

A. No; the current would be setting in the direction of this vessel all that time.

Q. Then if the tide was flooding, the current would not—

A. The tide was ebbing this time, was it not, running out?

Q. Assuming that the tide was flooding?

A. Assume that it was flooding?

Q. Yes, sir; at the time of the dragging and the collision.

A. At the time of the dragging and collision, yes.

Mr. ASHTON.—It was ebbing at the time of her first coming to anchor; it was flooding at this time.

A. (Continuing.) Let me ask you; you are having a flood tide at this time, and you say that the wind—

Q. I prefer to put my questions as Mr. Ashton did, purely hypothetically, Lieutenant, and we will take our chances between the counsel on the other side and myself as to whether the questions are based on the facts of the case with which you would not be concerned.

A. All right, just give me the conditions then.

(Testimony of Lieutenant R. F. Lopez.)

Q. Assume that the tide is flooding—let us go back to that now—and that the "Rickmers" is at the point located by you on this chart with the letters "R. L." and the "Mildred" at the point indicated by you on this chart at the letters "M. L.": Would a wind blowing from south to south southwest carry the "Rickmers" against the "Mildred" so as to strike her jib boom?

A. From south and south-southwest? No, it would not, that wind would not do it.

Q. Would the current, if the tide was flooding, have a tendency to set the "Rickmers" farther eastward than the "Mildred," assuming that she starts from a point already to the eastward and south'ard?

A. Well, I do not know what the current is in this—along here (pointing on chart)—what the direction or set of the current is along there.

Q. Assume that the tide is flooding? A. Yes.

Q. Its tendency would be to set the "Rickmers" farther to the eastward and off from the "Mildred" instead of toward her as far as the current is concerned, would it not? A. Yes, assuming the current was—

Q. Of course, we are proceeding upon assumptions, entirely, Lieutenant?

A. Yes.

Q. You are not supposed to know anything about the facts and we are dealing entirely with assumptions here.

A. Yes.

Q. If the tide was flooding and the wind was blowing from south to south-southwest and the "Rickmers"

(Testimony of Lieutenant R. F. Lopez.)

came in collision with the "Mildred" at a point as located upon this chart by the letters "M. L." and she continued drifting from the "Mildred" with the wind and current, that would carry her—flood tide—would that carry her in the direction of the "Stimson" as located upon this chart? A. No.

Q. Which way would it carry her?

A. It would carry her in a southerly direction away from her. You see, the current, the flood tide, coming down there (showing on chart), would take her in that direction (showing on chart).

Q. What effect would the wind have, would it overcome the tide?

A. If the wind was stronger than the tide of course she would go with the wind.

Q. Would the wind, blowing from the south, to south-southwest, carry her in the direction of the "Stimson" from the "Mildred"? A. Yes.

Q. Independent of the current of the tide?

A. Yes.

Q. Now, if the vessel was drifting, would she be able to direct herself at all under those conditions so as to avoid the ship towards which she was drifting, in a distance such as indicated upon this chart between the letters "M. L." and the letters "S. L."

A. She might be able to do it. I think—

Q. How would she do it?

A. By the use of her helm and sail.

(Testimony of Lieutenant R. F. Lopez.)

Q. What sail would she use?

A. Well, it would depend on the direction of the wind which way she wanted—she could set her head and after sails, she could use them just there.

Q. Assume that the wind is blowing from the south or south-southwest.

A. Yes, from the south, or south-southwest there. A vessel with her anchor down might be hoisting her head sails and the effect of the current bear her head off enough to give herself a sheer and clear another vessel; that is possible.

Q. What is the distance indicated here on this chart between the "Mildred" and the "Stimson"?

A. Half a mile.

Q. In that distance of half a mile, would not the "Rickmers" have ample time to escape a six or seven hundred ton schooner at anchor where the "Stimson" was by the use of her helm and sails, putting up—

A. Not for a certainty.

Q. Her small sails.

A. Not for a certainty—sure.

Q. Would it not be her duty to attempt to do so?

A. Yes.

Q. And when she knew a schooner was riding at anchor and she was approaching it under those circumstances it would be her duty to use her helm and also to put up small sails to escape her, if possible?

A. Yes.

(Testimony of Lieutenant R. F. Lopez.)

Q. Would she not have much better opportunity to do that than the schooner which was at anchor, your own vessel being under way? A. Yes.

Mr. ASHTON.—I move to strike out that last question and answer as not in line with the facts of the case, as it does not assume that the "Rickmers" was in a damaged condition, her lines and sails, disabled, some of them, and otherwise disabled through her collision with the "Mildred."

Q. Suppose that the "Stimson" was at anchor in a storm blowing at the rate of ten or eleven according to the Beaufort scale, and all her cable was out; would she be able to do anything in the way of getting out of the way of an approaching ship?

A. If it were blowing ten or eleven, no vessel would hoist much sail at that time. That would apply to the other question, that is, they have ten or eleven, which I do not think is possible at the time, and neither one of them could hoist any sail to any account.

Q. Under those circumstances, would you say that the schooner "Stimson" with her cable all out could do anything to escape?

A. Nothing, except with her helm, provided, it was growing from ten to eleven. She might hoist a little—might hoist a little of her jib.

Q. That would be much less likely to free her than hoisting of a little of the jib on the moving vessel, would it not? A. You mean less likely to free her?

(Testimony of Lieutenant R. F. Lopez.)

Q. Yes, sir.

A. Yes; I think the vessel dragging, the effect of the head sail would probably—

Q. Give them much more scope and opportunity of escape, would it not?

A. No, I don't think so.

Q. You don't think so?

A. No, I don't think so. The cable would be taut out if she was dragging—

Q. No, but suppose her anchors were not touching bottom.

A. That could not be at all, she would be gone then.

Q. If the water was too deep she might be dragging without her anchors touching bottom?

A. Yes, if the water was too deep.

Q. If she did not have chain enough out?

A. Yes; but if the vessel was dragging and her anchor was touching bottom and the chain was taut out, it would have no more effect on her than a vessel that was at anchor.

Q. That was holding? A. No.

Q. Do you not think her motion would enable her to veer her direction much better than a vessel that was riding at anchor?

A. You can see by the amount of water here (showing on chart)—you say that she dragged down there (showing)—that her anchor must have been touching if she veered out, because you see there it is twenty-two

(Testimony of Lieutenant R. F. Lopez.)

fathoms, and twenty-four fathoms, and at that time she started with forty, you see, and she veered a great deal more. Her anchor must have been on the bottom at the time.

Q. Being in motion she could do more to veer her direction, could she not, than a ship that was at anchor?

A. No, not when she was dragging her chain, no.

Q. But your opinion is that under such circumstances, neither vessel could do very much to alter their direction then.

A. It would be a precaution that some might take, but it would have, in my opinion, very little effect.

Q. Now, Lieutenant, suppose that when the "Rickmers" was brought into this position and dropped her anchor the wind was blowing at the rate of six or seven on the Beaufort scale: What would you say as to whether forty to forty-five fathoms on the port anchor alone would be sufficient to properly hold her?

Mr. ASHTON.—I object to the question as it does not imply there were any schooners astern of her.

A. I think forty-five fathoms would be sufficient in an ordinary wind.

Q. When the wind was blowing six to seven on the Beaufort scale.

A. Well, six to seven—seven is a very strong blow.

Q. Would you say that forty to forty-five would be sufficient?

A. Forty-five would hold, but as a precaution—

(Testimony of Lieutenant R. F. Lopez.)

Q. Lieutenant, does not good seamanship require long scope to chain especially where the holding ground slopes toward the way the vessel is riding?

Mr. ASHTON.—I object to the question as it does not contemplate a state of facts shown by the evidence in this case?

A. There is a certain amount of chain beyond which of course I do not think it does any good at all. Forty-five fathoms is not that limit. I should say blowing seven that about—well, say, fifty to sixty fathoms would have been about the extreme limit.

Q. Lieutenant, is it not the custom among seamen to put out six fathoms of chain to every one of depth of water? A. No.

Q. In ordinary weather?

A. The rule is three times the depth.

Q. Is not the rule about six times the depth?

A. No, three times the depth; that is the way we do it.

Q. As the weather grows worse, as the wind increases, then the amount or scope of chain is increased up to about six or seven times, is it not?

A. Yes, either that or let go another anchor which in some cases would give a better effect than letting go an increased amount of chain.

Q. Is it not ordinarily true among seamen, especially among merchant marine, that it is deemed safer to have

(Testimony of Lieutenant R. F. Lopez.)

a longer scope of chain with one anchor than a short scope with two?

A. Well, that would depend on how short the scope was.

Q. Well, but answer the question generally.

A. Yes. You spoke of a short scope; of course if it is a very short scope it is not safe, but I should rather have down one anchor with forty-five fathoms and the other with thirty in a case like this than sixty fathoms out on one chain. I would have more chance of holding under those conditions.

Q. Well, would you not consider if the wind were increasing and a storm was developing the low barometer, that a careful navigator would be required to increase the scope of his chain as the weather grew worse?

Mr. ASHTON.—I object to the question as assuming conditions and a hypothesis that is not justified by the facts.

A. Yes, that would be the custom.

Q. Until he had out a cable about six times as long as the depth of water—six or seven times.

A. No, I don't think—not necessarily that amount anyway. I would not.

Q. Would you not require a longer scope of cable where you were anchored on a sloping shore and the storm was blowing off shore? A. Yes.

Q. Well, if the storm increased until it was blowing—gradually developing—into a gale, would you not con-

(Testimony of Lieutenant R. F. Lopez.)

sider that the amount of chain should be at least six times the depth of water?

A. Not in all cases, no. I should not take that as the rule.

Q. Ordinarily you would, would you not, especially where the holding ground was such as I have just described?

Mr. ASHTON.—We object to all these questions as they assume a wholesome berth and a clear berth for the ship, without any other ships astern of her?

A. In an anchorage such as you speak of, with a shelving and bad holding ground, I should have, say, about six times the amount of chain.

Q. Now, if the "Rickmers" was located at the point indicated by you on this chart by the letters "R. L." and the wind was blowing from south to southwest, what direction would she be riding, towards which boat, which ship?

A. About south-southwest; she would be riding, of course, in that direction (showing on chart).

Q. Riding in a general direction between the "Mildred" and the "Corona," would she?

A. Between those two vessels.

Q. Now, sir, assume that the distance between the vessels was an eighth of a nautical mile or more, would it not be entirely safe to increase the scope of the chain so as to reduce that distance between the vessels at least one-half?

(Testimony of Lieutenant R. F. Lopez.)

Mr. ASHTON.—We object to that question until the length of the "Rickmers" is given and the length of of hawser which the "Corona" and the "Mildred" had out are given.

A. I should think that would be too near—one-half would be too near.

Q. Would you say they would be too near if there was a distance of four hundred feet between the vessels?

A. Yes. To make the distance between the vessels two hundred feet, would be too near, I should say.

Q. If you made the distance between the stern of one vessel and the bow of another vessel two hundred feet you would think that would be rather too little?

A. Rather too little.

Q. But it could come up to about two hundred feet, do you not think under those circumstances—no reason why it should not be safe up to that distance, is there?

A. I would not get as near as that unless forced to by some—

Q. Well, if the weather were growing bad—

Mr. ASHTON.—Let him finish his answer to your former question.

A. I should not get as near as two hundred feet under any conditions if I should avoid it.

Q. Well, if you found yourself at anchor in such a situation and the storm was increasing, you would pay out chain until you came within approximately two hundred feet under such circumstances, would you not?

(Testimony of Lieutenant R. F. Lopez.)

A. I would if I thought I would drag by not doing so.

Q. Now, if in coming to anchor, you had broken your compressor and had dragged and the storm increased to nearly double its force, as it was increasing you would pay out more chain—under those circumstances you consider there was danger, would you not?

A. I do not understand this question: In what case do you mean? In a case where you have a vessel in close proximity, say within two hundred feet of you?

Q. I will put the question in this way: Suppose that at four o'clock in the afternoon of the 25th of December, the "Rickmers," a vessel of about twenty-two hundred tons, net register, in tow of a tug is brought to anchor in Shilshoal Bay, being the bay shown on this chart which you have identified, and on the lee shore; the wind blowing from south-southwest, a tolerably stiff breeze, rated by some of the witnesses as high as six or seven on the Beaufort scale, and that at that time there are three schooners at anchor in the bay and she is taken inside or towards shore and southerly from the nearest schooner and she drops her port anchor and runs out about forty to forty-five fathoms of chain when she breaks her compressor block and drags and drifts down towards one of these schooners, namely, the "Corona," and the tug thereupon picks her up again and she again anchors; would you not say that under those circumstances a prudent mariner would put a greater scope of chain on if the opportunities permitted it?

(Testimony of Lieutenant R. F. Lopez.)

A. Well, greater scope than what?

Q. Than forty fathoms?

Mr. ASHTON.—We object to the question until it embodies the surrounding conditions and circumstances and particularly the positions and bearings of other vessels.

A. It is your question now that you would have more than forty-five fathoms out?

Q. More than forty?

A. More than forty alone, that is having one anchor.

Q. Yes, sir.

A. If she had only one I should put out—yes, she would probably put out more than forty.

Q. Now, I will ask you what would be the reason for the breaking of the compressor block under such circumstances? A. Well, I could not say.

Q. If the wind was blowing not more than six or seven on the Beaufort scale ought her compressor block to be sufficient, if properly handled, to resist the strain?

A. Well, a compressor block should stand—should be able to stand a strain under a light wind or anything of that kind. Why it should break, I do not know.

Q. A compressor block should be sufficient, if handled properly, to withstand even a gale, should it not? A. No.

Mr. ASHTON.—We object to the question.

Q. A very high wind?

(Testimony of Lieutenant R. F. Lopez.)

A. The strain is not taken on the compressor block alone; the chain would be around the bitt in addition to the compressor block.

Q. In addition to that? A. Yes.

Q. The bitts ahead the compressor?

A. Abaft the compressor, if the compressor—I understand that the compressor there is where it catches the links of the chain?

Q. Yes.

A. Oh, back of that then the chain is taken around heavy bitts.

Q. I know, but no strain is taken on the bitts until after the compressor yields, is there?

A. In a gale you could take the whole strain on the bitt, you would not trust entirely to the compressor.

Q. In good seamanship you would, yes.

A. Yes.

Q. But, I say, suppose the storm was only blowing now six or seven by the Beaufort scale, not to exceed that at least, what would account for the breaking of the compressor block under those circumstances, would it not be defective or else improperly handled?

Mr. ASHTON.—Objected to as not proper cross-examination.

A. Of course it could come from any one of those causes.

Q. Suppose that the compressor block split just as

(Testimony of Lieutenant R. F. Lopez.)

soon as it got the strain upon the chain; what would that indicate?

Mr. ASHTON.—Objected to as not proper cross-examination and because no foundation has been laid to show the possibility of the witness answering the question.

A. Show a defect in the compressor block.

Q. Might it not show also that the compressor block had been put on before the chain had tautened after the anchoring and after the vessel had taken up the stretch of chain?

A. I do not think that would cause it to break.

Q. Well, ought the compressor to be applied until the vessel was riding an anchor, until it had taken up the stretch of cable?

A. Until there is a strain on the chain?

A. It might be, there would be no harm in her taking it before.

Q. But by fastening the compressor upon the chain you would get the sudden force of the ship's motion?

A. Yes.

Q. In suddenly jerking upon the chain, would you not?

A. Yes; but that would be a very small force. Where a ship is just paying out chain that is not very great—not strain enough to break.

Q. If the compressor block was in good condition?

A. In good condition, yes.

(Testimony of Lieutenant R. F. Lopez.)

Q. Do you think that using a tackle after the break of the compressor block, fastening the chain so it would be held by a hook an inch and a half or two inches in diameter, would make it as secure as with the compressor block in proper condition?

A. Well, the tackle put there was not intended to hold the chain, I do not think.

Q. What was it intended for?

A. It was simply to lighten it up. You could not possibly hold the chain by that. The chain must have been held by bitts or something, you could not hold it by the tackle.

Q. Suppose it was held by the tackle?

A. Alone?

Q. Yes, sir, except the chain was made fast to the windlass.

A. How large a tackle did you say that was?

Q. A four and one-half inch hawser with an inch and three-quarters hook.

A. An inch and three-quarters hook would not do it—would not hold the chain.

Q. If you had your port chain supported in that way after the compressor had broken would you consider that a safe reliance in an increasing gale—that port anchor?

Mr. ASHTON.—I object to all these questions and move to strike them out, both questions and answers, as not cross-examination and assuming conditions and

(Testimony of Lieutenant R. F. Lopez.)

facts also not established by the testimony heretofore given.

A. Is that question if this chain is held by a tackle with an inch and three-quarter hook?

Q. Inch and a half or inch and three-quarters?

A. No conditions would that be sufficient to hold the chain with nothing to rive by.

Q. Suppose that hook under the strain stretched—opened out—straightened out—and at or about the same time the anchor appeared to have been lost, how would you account for the breaking of the cable, would it be likely to be due with the defect of the cable?

A. The block could have nothing at all to do with the loss of the cable. Even with the hook opening out as you say, that would have nothing to do with the loss of the cable. The cable itself must have had a weakness in it.

Q. Would you consider such a tackle to be sufficient, coupled with the fact that the chain was made fast to the windlass to hold the port anchor—to hold the ship with a port anchor in a gale that was increasing from seven to ten or eleven by the Beaufort scale?

A. The capstan would be the main hold in this case. That tackle would—

Q. Suppose it is made fast to the windlass and the windlass gives way or becomes impaired; then you would make fast to the capstan, would you?

(Testimony of Lieutenant R. F. Lopez.)

A. Make fast to the capstan or the bitts—probably to the head bitt.

Q. If you found that your port block, compressor block had broken and you made fast with such a tackle as has been described, would you rely on that anchor or would you rely upon your starboard anchor under those circumstances?

A. That anchor would be just as reliable as the other even if the compressor block was gone, provided the chain was taken to the bitts or something that would hold, yes. I do not know—

Q. But if that were not done, would you rely upon it or would you place your reliance upon the starboard anchor.

A. I would in no circumstances trust to this block or tackle to hold the chain, but the port chain would be as good as the starboard, even after the compressor block was gone.

Q. Why, under what circumstances would it be?

A. If it were taken to a proper holding place, to bitt or something equally strong.

Q. Otherwise it would not be reliable in such weather? A. Yes.

Q. And unless it was made fast to a bitt or something equally strong? A. Yes.

Q. You would then put your reliance entirely upon your starboard anchor and chain, would you not?

A. Yes.

(Testimony of Lieutenant R. F. Lopez.)

Q. Having out the starboard anchor and chain with thirty fathoms of chain you would consider that sufficient in a gale that was increasing from six or seven in the evening up to ten or eleven by the Beaufort scale?

A. With thirty fathoms alone?

Q. Yes, taking nothing else but a port anchor stayed in the way I have described it.

A. No.

Q. Now, suppose the facts were as follows—I read you from the testimony of the first mate of the "Rickmers"; after the compressor block was split in pieces—the following testimony I read as given by the witness after the witness had described that the compressor block was split into two pieces: "Question. Now, you made fast a four and a half manila cable to the first links? Answer. Yes, sir, and slipped or shoved an iron bar through it so it could not slip through the links, like this, and hooked the tackle behind here, the chain strapped around the mast and hooked the tackle on here and the chain strapped around the mast and the other block here and heaved that out there. Question. That was held in position, the port chain, by a four and one-half inch manila cable. Answer. Yes, sir. Question. You mean four and a half inches in diameter. Answer. Yes, sir." And suppose, also that it appears that this hook, iron hook, from an inch and a half to an inch and three-quarters was the means by which

(Testimony of Lieutenant R. F. Lopez.)

this manila cable was attached to the chain; would you say that that was sufficient to hold the cable?

A. No, I understand that this tackle was made fast to the manila hawser and then hooked into the chain. I can't get from what he says just how that tackle was secured.

Q. I am reading to you what he says on the subject.

A. It is not very plain. I can't make out just how that hook was secured from his explanation.

Q. He then proceeds to describe that this again parted, this second tackle, in the following language: "Question. You mean then four and one-half inch manila hawser broke—parted? Answer. No, the hook carried away. Question. The hook that fastened it to the mast? Answer. The hook that was fastened on the strap. Question. From the tackle that fastened onto the chain? Answer. Yes; that carried away. Question. That was in addition to this manila rope, was it? Answer. It was hooked into the manila rope, that held it one way. Question. And the other way it was fastened on it? Answer. Yes, sir. Question. So one of the fastenings that was hooked onto this manila rope carried away? Answer. Yes, sir. Question. But that did not let the chain loose, did it? Answer. Just about five fathoms of chain ran out after that? Question. Just about five fathoms of chain ran out after that. Answer. Yes, sir. Question. That would change its position, but the port chain was still fast to the ship?

(Testimony of Lieutenant R. F. Lopez.)

Answer. We secured it with the windlass. Question. You had to haul it in again with the windlass. Answer. No, we never haul anything in with the windlass. After the anchor is down we slack the compressor—after the windlass is fast we turn this compressor up and let the strain come on that after that tackle carried away; this stopper on the windlass was fast; here was the windlass, but it was not strong enough and about five fathoms slipped out; then it holds and we started to put on another tackle, and the same time we started to put on another tackle the ship was moving." Now, do you understand that to be sufficient to make that port chain and anchor secure?

A. Well, I do not know how he had that tackle secured to the chain yet. He had the chain around the windlass, I understand by that, and then he had this four-inch hawser. Well, we would suppose this four-inch hawser was taken to the chain, too, I would say secured to the chain, but not with an inch and a half hook, as you read, I would not infer from that, because there would be no use of having a four-inch hawser with an inch and a half hook, because the hook would go long before the hawser would taken anything of a strain on it. He must have had this four-inch hawser made fast to the chain in some way or other to help hold it.

Mr. ASHTON.—I move to strike out all this line of examination as not proper cross-examination.

(Testimony of Lieutenant R. F. Lopez.)

A. (Continuing.) I do not know how that thing was secured from his explanation.

Q. Well, you would not consider any method of securing the chain by such a tackle sufficient to hold the ship would you, to hold the anchor or chain?

A. With a hook of that size?

Q. No.

Mr. ASHTON.—I move to strike it out as not in line with the facts and as not cross-examination.

Q. Suppose, as stated in the testimony just read to you when this hook gave way the second time, that is, when the hook itself gave way and it slipped out five fathoms, as described that the ship was already dragging; what would it then be good seamanship to do in respect to the starboard anchor as to which there had been no trouble?

A. The starboard anchor having how much on it, how many fathoms?

Q. Thirty fathoms.

Mr. ASHTON.—Well, what depth of water?

A. Pay out more chain.

Q. Assuming the depth of water to be in the neighborhood of fourteen fathoms?

A. Yes, and that the other chain did not hold.

Q. Now, if the ship was allowed to drag until it struck the "Mildred" before they paid out more chain on the starboard anchor, would that be good seamanship?

(Testimony of Lieutenant R. F. Lopez.)

Mr. ASHTON.—I object to that question as not in line with the facts.

A. If it is allowed to drag until she struck her, provided there was room enough—if by paying out she would have fouled her, there would be no use of paying out the chain, but you are saying there was room enough between them?

Q. Yes, sir?

A. Then she should have paid out more chain.

Q. Well, assuming there is approximately an eighth of a nautical mile between them?

A. And she begins to drag?

Q. And she begins to drag?

A. Then they would pay out more chain.

Q. Pay out more chain at once and not wait until she collides with the "Mildred"?

A. Naturally.

Q. So if she did not begin to pay out more chain until after she had collided with the "Mildred," you would say that was not good seamanship, would you?

A. No, it would not be.

Q. Suppose it was the opinion of the master that at the time of the parting of this hook, this iron hook that I have described attached to the shackling that was made fast to the port chain, that the anchor broke and was lost at that time.

A. That is, that the chain parted?

(Testimony of Lieutenant R. F. Lopez.)

Q. Yes, I mean not that the anchor broke, but that the chain parted?

Q. Was it not his duty in the exercise of good seamanship to immediately turn his attention to his starboard anchor and begin to pay out more chain?

Mr. ASHTON.—You mean before he dragged?

Q. Immediately upon his concluding that the—

A. That the port anchor was gone.

Q. That the port chain was broken and gone?

A. That the port chain had broken and that he had then—

Q. About thirty fathoms on his starboard anchor?

A. Yes; he should pay out then, that is, assuming that it was blowing in this way.

Q. Yes, sir; that it was blowing with an increasing gale? A. Yes.

Q. In his testimony the captain stated as follows: "Question. Do you know when the chain itself broke? Answer. I think it broke the moment the hook broke. Question. Meaning the hook which was a part of the tackle, of the luff-tackle that was made fast to the chain. Answer. Yes, sir. Question. You think it broke the moment the hook broke? Answer. Yes, sir." That being his opinion, what was it his duty to do, having left his starboard anchor intact with thirty fathoms of chain, with an increasing gale, under circumstances such as have been described in the other testimony with reference to the shore and the other boats?

(Testimony of Lieutenant R. F. Lopez.)

Mr. ASHTON.—That is objected to as not proper cross-examination, because the depth of water is not given.

Q. The depth of water being from approximately fourteen fathoms at the place of his anchorage?

A. He should have turned his attention to his starboard anchor at that time, being the only one left.

Q. Would it be good seamanship to turn his attention to the port chain and endeavor to remedy that under those conditions or to turn his attention exclusively to his starboard anchor under the conditions that have been described?

A. Nothing could have been done with the port chain after it parted.

Q. Lieutenant, if as described by the mate of the "Rickmers," upon the breaking of this hook, this iron hook of an inch and a half to an inch and three-quarters in diameter, about five fathoms of the chain ran out before it brought up on the windlass, would it not follow necessarily that this hook was the primary support of the anchor chain?

A. Not necessarily. It might have been held both by taking it around the capstan and then from this hawser and the tackle—might have used both, but when the hook carried away it threw the whole strain on the capstan.

Q. Why should it run out, why would five fathoms of it run out, if it was made fast around the capstan?

A. Well, unless it was an angle like that (showing) I

(Testimony of Lieutenant R. F. Lopez.)

do not know. Five fathoms—I do not see where it should.

Q. You do not see how it could run out five fathoms unless this hook was supporting it primarily, do you? It would seem necessarily to follow, would it not?

A. Yes. From the fact that the hook carried away and five fathoms went out—it would not mean necessarily that it was holding the—preventing the whole chain running out, because it was not, the chain was around the windlass, too—

Q. Yes, but I mean it would be holding the—

A. Holding the biggest part of the strain and the strain was on that hook. That is, from the way, as well as I can understand—

Q. His language? A. Yes.

Q. On which side of the "Rickmers" would the "Mildred" be if the locations were as you have described them on this chart, the port *of* the starboard side?

A. When they were riding what, to the ebb tide?

Q. When they were riding at anchor in the positions in which you have located them on this chart.

A. Well, you see riding in that direction (showing on chart) the "Mildred" would be on the starboard side of the "Rickmers."

Q. (Mr. ASHTON.) In an ebb tide?

A. Running an ebb tide, she is heading that way (showing on chart), her starboard side is her right.

(Testimony of Lieutenant R. F. Lopez.)

Q. (Mr. HUGHES.) Suppose all the ships were heading bows to the shore?

A. Suppose they were all heading towards West Point—that way (showing on chart)—then the "Mildred" is on the starboard side of the "Rickmers."

Q. Suppose they were heading in the direction of the wind, towards the south?

A. Still beyond the starboard side. If they headed in that direction (showing on chart) the "Mildred" would be on the starboard of the "Rickmers."

Q. Then if the mate of the "Rickmers" said that the "Mildred" was on their port side your location there would not be correct, would it?

A. No, she was not on the port side.

Q. Suppose that a flood tide was running and a gale was blowing of ten or eleven by the Beaufort scale; how long would it take the "Rickmers" to drift from the location of the "Mildred" to that of the "Stimson," fixing their locations as shown on the chart you have identified?

A. I could not tell.

Q. Approximately how long?

A. There are so many conditions in it; it depends on the strength of the tide—

Q. The tide would be running the other way, would it not, if it was flooding?

A. Yes, sir; if it was flooding, and against the wind, but her speed would depend on the strength of tide and also on the vessel itself. Some vessels drift faster than

(Testimony of Lieutenant R. F. Lopez.)

others, but you would have to know at any rate the strength of the tide, then you could approximate it.

Redirect Examination.

Q. (Mr. ASHTON.) Lieutenant, if the wind was blowing ten or eleven on the Beaufort scale and the "Rickmers" being of the tonnage mentioned, and she being light or only partially in ballast, coming in here for cargo, her anchors dragging, one or both of them, and he having out not to exceed thirty fathoms of chain, how long would it take her to drift four hundred feet with the wind at that usual velocity?

A. I could not tell how long it would take.

Q. It would take but a very few minutes, would it, Lieutenant?

A. No one could tell you that because you could not tell what effect her anchors would have. They might be dragging and catching and all that—no one could tell.

Q. Suppose they were simply dragging?

A. She may have had them up.

Q. Suppose they dragged and continued to drag?

A. I could not tell.

Q. At any rate it would only take a very short time, would it not? A. Four hundred feet?

Q. Yes, sir.

A. It would not take very long, but I could not pretend to say what speed she would drag.

Q. Assume that these ships are in the positions you have indicated on that chart, Lieutenant, and that the tide

(Testimony of Lieutenant R. F. Lopez.)

was flooding, and that the wind was veering from due south to south southwest; would you then place the "Mildred" on the starboard side of the "Rickmers" or astern of her, or nearly so?

A. That can be shown very easily if you will give me whether you have the true direction.

Q. The true direction of the wind?

A. Yes, the true direction, or the—because here is a difference of two points.

Q. Or twenty-three degrees, say.

A. Yes; it would make a difference of two points; that is simply a matter of putting the thing on your ruler—then another thing, you have got the position of the ships here and have not got the position of their anchors, and you can't tell, this vessel (showing) may have been riding on her anchor way up here (showing); she would have all that are to swing in.

Q. In other words, with the wind veering from south to southwest or two points—

A. Well, taking that to be true south then—

Q. True south and true south southwest; now, you have got a variation of how much?

A. Two points.

Q. Eleven and three-quarters degrees in a point, you would have a variation there of a little over twenty-three degrees? A. Yes.

Q. And the tide is flooding? A. Yes.

Q. Is it not possible with a wind of that velocity and

(Testimony of Lieutenant R. F. Lopez.)

having that variation for the "Mildred" at times to be almost if not quite, astern of the "Rickmers."

A. No; if the wind—the question comes on the strength of the tide. If she is riding to the wind—

Q. Say it is full flood?

A. Yes; full flood does not make any difference; a wind blowing ten or eleven—sixty-five miles an hour—I would say would have complete control of the ship at the time—tide would not be strong enough to affect her; in that case if she came around to south you can see—there is the direction of south (showing on chart), and that would be the line on which they were.

Q. Draw a line with pencil on that chart showing that.

A. (Drawing on chart.) That would be south.

Q. Now, draw a line with the wind going south southwest.

A. There it is (drawing)—there are the two lines running south.

Q. Both south? A. Yes.

Q. Now, draw that running south-southwest.

A. South-southwest would be here (showing and drawing on chart).

Q. (Mr. HUGHES.) Are you giving the true direction again the same way as before?

A. Yes, the true direction again, that would not alter the positions. But that in itself, I say, would not show anything, because you have got to draw from their anchors, not where the ships were themselves. They swing

(Testimony of Lieutenant R. F. Lopez.)

from their anchors; we are taking this position just as if we were taking it from their anchors. That is the stationary point, you see. Suppose there is her anchor up here (showing on chart) and she is riding that way (showing); when she came around to the south she would swing clear around to her anchor and might swing right into it.

Q. (Mr. ASHTON.) Now, Lieutenant, just a minute; the wind is blowing, we will say, from sixty to seventy miles an hour; the "Rickmers" is loose, she is dragging; the "Mildred" is fast; the tide is flooding and the wind is veering anywhere within two points; would not that wind create such a havoc with those ships and have such control over them, one being loose and the other fast, that no man could tell, the "Rickmers" would be as liable to be thrown against the "Mildred" as against the "Corona," or vice versa?

Mr. HUGHES.—Objected to as argumentative, incompetent, immaterial, and not a proper hypothetical question.

A. The "Rickmers" is dragging, you say?

Q. The "Rickmers" is dragging and the "Mildred" being fast and the wind in that condition?

A. Blowing a gale and shifting several points?

Q. Yes, blowing more than a gale.

A. Yes, they might be brought together.

Q. Shifting two points? A. Yes.

(Testimony of Lieutenant R. F. Lopez.)

Q. Now, speaking about this hook carrying away; if that hook had carried away and five fathoms run out and the hook was fastened or holding a shackle, which shackle formed an angle, say an acute angle or right angle, and the five fathoms ran out, that five fathoms would be the length that was taken up, would it not, on the shackle when it was brought up taut? In other words, the angle would be reduced to a tangent when brought up short?

A. If you will show me—that hook is something I don't understand at all in this thing. I don't know how it was made fast. If you will show me how the hook was made fast, as you suppose, then I will be able to answer that, but I can't tell from what Mr. Hughes read about the hook.

Q. Well, assuming that the hook was made fast into the cable—

A. Suppose there is a chain coming in there (showing), say he had taken it from the windlass, and around the windlass there (showing). Now, where is this hook made fast and how? What part does it play in this (showing)?

Q. The hook, as I understand it, was made fast to the cable to tether it, you might say, or to keep it from going out along about this point (showing).

A. It is hooked into the chain there?

Q. Yes, and the hook is that which attached the shackle here to that cable at that point, and—

(Testimony of Lieutenant R. F. Lopez.)

A. Attached the shackle? What do you mean by that?

Q. As I understand it the hook was at the end of the chain which was used as a shackle for the purpose of shackling it onto the cable.

A. Well, of course a shackle means a different thing. They have just a chain here coming out like that (showing)?

Mr. HUGHES.—I do not know how you are going to get that kind of testimony into the record, and I certainly cannot get in an objection to it. Put your questions so they will get in the record and I will get an objection to them.

A. (Continued.) Well, I will tell you, unless I know exactly how that thing is secured I can't answer it. It is impossible for me to answer unless I know. The whole thing depends on how that chain was secured and I could not answer unless I know exactly.

Q. Well, now if this hook when found was found not broken, but actually straightened out, or nearly so, drawn out, would you consider that there had been an undue and excessive strain on the hook? A. Yes.

Q. If the cable into which that hook was fastened carried away, would you not attribute the carrying away of that cable that is, providing it carried away by the cable itself parting, you would not attribute the carrying away of that cable to any weakness or insufficiency of strength on the part of the hook, would you?

(Testimony of Lieutenant R. F. Lopez.)

A. No.

Q. Now, Lieutenant, supposing you had been the captain of the "Rickmers," the wind was blowing, say, six or seven on the Beaufort scale, and we will say that it was increasing; your port anchor had carried away; you were holding by your starboard anchor alone with thirty fathoms of chain out; the night was dark, the same as it is at the present time when you are giving your testimony, same month in the year, except that it was some later in the evening, between nine and eleven o'clock; nothing was visible in connection with the two vessels astern of you and not over four hundred feet from your stern to the end of ther jib-booms; you could see nothing of them excepting their lights; you as master of the "Rickmers" under those conditions would figure that they would be giving more scope—would have out all their scope or nearly so, would you not?

Mr. HUGHES.—Same objection as to the former hypothetical questions.

A. Nearly all, yes.

Q. What is the usual scope of a deep water vessel's scope of cable, how much would they carry generally?

A. How much chains do they carry in their lockers, the total amount?

Q. Yes.

A. A hundred and twenty fathoms.

Q. So that you would figure those schooners astern

(Testimony of Lieutenant R. F. Lopez.)

of you would have out anywhere up to a hundred fathoms, would you not?

Mr. HUGHES.—Same objection as before.

A. If it were a schooner I would say less.

Q. Well, you would figure on her having out how many fathoms?

A. Seventy-five, I should say.

Q. As a master mariner exercising prudence and your best judgment under those circumstances, you would figure on each schooner having out that much, would you not?

Mr. HUGHES.—Same objection.

A. Yes.

Q. Now, then, Lieutenant, if those schooners under those circumstances were not more than four hundred feet abaft of your stern and possibly off the stern to starboard or port, I care not whether they were directly astern or not, and you were anchored in only fourteen fathoms of water, would you in the exercise of good seamanship and when holding all right before commencing to drag, would you have paid out more cable on your starboard anchor?

Mr. HUGHES.—Same objection to the former questions.

A. If I were holding all right?

Q. Yes, sir; had not commenced to drag, would you

(Testimony of Lieutenant R. F. Lopez.)

have paid out more cable on your starboard anchor under those circumstances?

Mr. HUGHES.—Same objection.

A. Well, what are the conditions? How much chain has she out on her? It would depend on the amount of chain that I had out on the starboard anchor.

Q. Say you had thirty fathoms out and fourteen fathoms of water.

A. And only with one anchor holding?

Q. Only with one anchor holding and these schooners within four hundred feet of your stern or less and they with seventy-five fathoms of cable out each.

Mr. HUGHES.—Same objection.

Q. Would you have taken the risk of paying out more cable?

A. They were directly astern of you?

Q. Yes, and swinging in the wind so as to—

A. If they were directly astern I should not pay out.

Q. Now, suppose they were swinging in the wind—

A. So long as I was holding I would not.

Q. Now, supposing they were swinging in a wind of that velocity and the wind veering, but only two points and you were holding all right: would you in the exercise of seamanlike prudence pay out more cable?

Mr. HUGHES.—Same objection.

A. No. A variation of two points there would make very little difference with the vessels astern.

(Testimony of Lieutenant R. F. Lopez.)

Q. There would be great danger of their coming astern of you if they were not with that variation, would there not?

Mr. HUGHES.—Same objection.

A. Yes.

Q. Now, after you commenced to drag then your judgment would be quite different, as I understand you?

A. Yes.

Q. And you would take desperate chances, then, in other words, in order to catch and hold again?

Mr. HUGHES.—Same objection.

A. The only thing to be done when you drag would be to pay out—the only chance would be to pay out more chain.

Q. And take your chances of collision with those astern of you?

A. If you have cleared you would have to take the chances.

Q. When you say that in the navy you figure on paying out chain to the extent of three fathoms of chain for every fathoms of depth of water—

A. Yes.

Q. That is your rule, is it not?

A. Yes, three times the depth; it is the general rule.

Q. Now, then, Lieutenant, that contemplates a free and a fair berth, does it not? In other words, if you have a berth in which you are liable to foul other vessels

(Testimony of Lieutenant R. F. Lopez.)

you do not adopt that rule? If the proximity of other vessels is such that you must reduce the rule you do not follow it?

A. No, of course not. If there is danger of fouling or—

Q. In other words, when you give that rule it contemplates a free and a fair berth for your vessel?

A. Yes.

Q. Am I right? A. Yes.

Q. Lieutenant, we will say the wind is blowing from sixty to seventy miles an hour and the "Rickmers" is adrift, not holding, and under conditions and circumstances whereby it is impossible for one or both of her anchors to catch and hold: would not that wind swing her about and turn her almost as it would a barrel so that she could not handle herself with her helm?

Mr. HUGHES.—Same objections as to the former hypothetical questions.

A. Her anchors are dragging or—

Q. She is adrift absolutely, her anchors not dragging upon anything? A. They are off the bottom.

Q. They are off the bottom.

A. Then what is the question?

Q. She would be a helpless, whirling derelict before the wind, would she not?

A. Yes. If your anchors are not touching the bottom she would be helpless.

Q. And could not be controlled by her helm?

(Testimony of Lieutenant R. F. Lopez.)

A. Could not be controlled by her helm.

Q. Assuming that she had no canvas?

A. No.

Q. And you would not attempt to put canvas on her, would you under those conditions, with the wind blowing that velocity and the vessel making for a lee shore.

Mr. HUGHES.—Same objection.

Q. Is it good seamanship to set a sail with the wind blowing sixty or seventy miles an hour.

A. If you are drifting on a lee shore you would be—anything to get you out would be—

Q. Yes, but, Lieutenant, supposing that the wind is in such a direction—

A. A lee shore means that the wind is blowing directly on shore.

Q. Assuming that the setting of the sail would have a tendency to throw you towards the shore, would you set a sail with a wind of that velocity?

Mr. HUGHES.—Same objection.

A. Certainly not.

Q. Now, Lieutenant, in your testimony upon cross-examination you spoke of it being possible for the "Stimson" by the use of her helm or possibly by the throat of one of her sails, assuming that it could have been raised slightly in such a storm—such a gale—to have sheered herself or swung herself in such a way as to have permitted the "Rickmers" to have gone clear of

(Testimony of Lieutenant R. F. Lopez.)

her; you spoke of it being possible if I understood you correctly.

A. It is possible, yes, that is my statement.

Q. Now, then, in addition to that I want you to assume that the "Stimson" at that time had out one hundred and five fathoms of chain to but one anchor; do you not think it would have been probable a vessel coming down upon her so as to strike her port side or strike directly upon her bow, that by putting her helm to starboard and having that amount of cable out, one hundred and five fathoms, that she could have sheered to port to such an extent as to permit the vessel drifting upon her to clear her.

Mr. HUGHES.—Same objection as before, and as leading.

A. It would be nothing more than a possibility.

Q. A vessel finding herself in that way, in extremis, in that manner, if you had been her master you would certainly have made the attempt, would you not?

Mr. HUGHES.—Same objection.

A. Yes.

Q. Mr. Hughes asked you about the flood tide having a tendency to set the "Rickmers" easterly of the point on which you have located her upon this chart. Now, a flood tide would have the same tendency and same effect upon the "Mildred," would it not? In other words, a flood tide would—

A. A flood tide would act the same on both vessels.

(Testimony of Lieutenant R. F. Lopez.)

Mr. HUGHES.—Provided they are both at anchor.

A. Both under the same conditions.

Q. If this wind blowing at this extraordinary velocity was coming in gusts and was veering from south to south-southwest the strain upon ground tackle would be more terrific, would it not, than if it were a steady blow? A. Yes.

(Testimony of witness closed.)

And thereupon an adjournment was taken to some date to be hereafter agreed upon by proctors for the respective parties.

At Office of Struve, Hughes & McMicken,
Seattle, Washington, January 22d, A. D. 1904.

Present: E. C. HUGHES, for Libelant.
J. M. ASHTON, for Respondent and Claimant.

Continuation of proceedings pursuant to adjournment per agreement, as follows, to wit:

JOHN McT. PANTON, a witness for and on behalf of respondent and claimant, being first duly sworn, testified as follows to wit:

Direct Examination.

(By Mr. ASHTON).

Q. Please state your full name.

A. John McTavish Panton.

Q. What is your occupation?

(Testimony of John McT. Panton.)

A. Marine surveyor.

Q. Have you been a master mariner?

A. Yes, sir.

Q. For what length of time?

A. For fourteen years.

Q. What is your age? A. Forty-three.

Q. What experience have you had in the navigating of steam vessels?

A. Ever since I joined a steamer, why, I have been navigating. That was in 1885; and I have been navigating since I was an officer in 1878.

Q. You have been navigating as master mariner since 1885?

A. No, sir, not. I have been a master mariner since 1890.

Q. In what waters?

A. All around the Sound; and on the Pacific Ocean across to China and Japan.

Q. How long have you been engaged in running across the Pacific Ocean? A. Seventeen years.

Q. Constantly? A. Constantly.

Q. On what ships?

A. On the "Victoria" and the "Arizona."

Q. To what extent, if at all, has that caused you to acquire a knowledge as to the measurement of charts and the course of vessels?

A. Daily practice in navigation, and the strict examinations we have had to go through.

(Testimony of John McT. Panton.)

Q. How many years have you been familiar with navigation and practical seamanship in Admiralty Inlet and Puget Sound? A. Eleven years.

Q. State whether or not you are familiar with the waters at West Point and Shilshoal Bay?

A. Particularly familiar with them, passing there going up and down.

Q. Are you familiar with the tides at about West Point?

A. Well, yes; as far as the tide tables goes.

Q. Speaking of tides generally, Captain, is there any length of time, and if so, what length of time is it that the tide is practically in abeyance when turning, ebb or flood?

A. We always allow between twenty and thirty minutes dead water—still water.

Q. When the water is practically stationary?

A. Yes, sir.

Q. In turning from flood to ebb, or ebb to flood?

A. Yes, sir, in turning. Twenty minutes.

Q. Do you remember, at my request of making an examination of the charts in evidence in this case, the larger charts? A. Yes, sir.

Q. Wait a minute. Being Exhibits, Libelant's Exhibit No. 1, and Respondent's Exhibit No. 1?

A. Yes, sir.

Q. Now, calling your attention particularly to Libelant's Exhibit No. 1, state whether or not, at my request,

(Testimony of John McT. Panton.)

you read over the testimony in this case down to date, and examined Libelant's Exhibit No. 1 for the purpose of determining whether or not the bearings of the four different vessels entering into this testimony in this matter were correctly located on Libelant's Exhibit No. 1, or for the purpose of determining whether or not—for the purpose of determining the exact location—bearing from West Point of the vessels shown on Libelant's Exhibit No. 1? A. Yes, sir.

Q. Have you determined the exact bearing of the vessels shown on Exhibit No. 1? A. Yes, sir.

Q. Have you fixed those as the bearings upon any other chart? A. Yes, sir, on the small chart.

Q. I hand you this small chart of Shilshoal Bay and ask you if that is the small chart to which you refer?

A. Yes, sir.

Q. Are those (indicating) the bearings to which you refer? A. Yes, sir.

Q. Marked in red ink? A. Yes, sir.

Q. Who fixed these bearings?

A. I took them from the other chart.

Q. From the other chart? A. Yes, sir.

Q. And from the evidence which you read?

A. Yes, sir. From the evidence which I read.

Q. State whether or not the bearings shown upon this small chart which you now have are the bearings of the vessels from West Point, as shown by the testimony, on Libelant's Exhibit No. 1?

(Testimony of John McT. Panton.)

A. Yes, sir; exactly like it.

Q. Is there any difference in the position of the ships shown upon this small chart which you now have?

A. No, sir; this is an exact copy from the evidence.

Q. Have any one of the ships been transposed, the position changed? A. Yes, sir.

Q. Which one?

A. The "Mildred," instead of being the inside ship, was the outside ship; and I changed it.

Q. Why did you change it?

A. According to the testimony, it would be impossible for the "Mildred" to be there.

Q. To be inside, do you mean? A. Yes, sir.

Q. Then, according to the testimony, the ships were located as shown upon this small chart, which you have?

A. Yes, sir.

Q. So that in fixing the position of the "Mildred" on the inside upon Libelant's Exhibit "A," there is evidently a clerical error made by the witness in making this exhibit? A. Yes, sir.

Q. Well, now, what is the bearing of the "Corona" from West Point as shown by the evidence?

A. About south 38 degrees west, as near as possible.

Q. North, you mean, do you not?

A. The ship would be from West Point north 38 degrees east.

Q. And what distance was she from West Point?

A. About seven-eighths of a nautical mile.

(Testimony of John McT. Panton.)

Mr. HUGHES.—Which ship is that?

The WITNESS.—The "Corona."

Q. (By Mr. ASHTON.) How did the "Mildred" bear from West Point? A. North 23 degrees east.

Q. Are these bearings you are giving true?

A. These are true bearings, sir.

Q. What distance was the "Mildred" from West Point?

A. Three-quarters of a mile.

Q. You mean nautical miles, don't you? Always?

A. Yes, sir, nautical miles.

Q. How did the "Stimson" bear from West Point?

A. North 29 degrees east true.

Q. And what was her distance from the point?

A. One mile and a quarter.

Q. That is all, Captain, just now.

Mr. ASHTON.—We now offer in evidence the small chart identified by the witness as the chart upon which he has placed the positions of the four ships.

(Paper or chart marked Respondent and Claimant's Exhibit No. 12.)

Q. Now, calling your attention to exhibit marked 10 and 11, state whether or not you have examined Exhibit No. 11; and if so, state whether or not the positions of the ships as shown upon that exhibit are identical or substantially so with the other charts now offered in evidence?

A. Well, substantially so. Not exactly. It is not exactly the same.

'estimony of John McT. Panton.)

Q. What difference would there be in the way of dis-
nces, if any?

A. Probably two hundred feet, or something like
at. An immaterial difference.

Q. That is, in the distances from the Point?

A. In the distances from the Point. No, no. The
stances from one another. The distance from the Point
correct; agree with the chart.

Q. Can you tell from these charts, and from the testi-
ony and the small chart Exhibit No. 12, which you have
epared therefrom, the distance that the "Corona" and
e "Mildred" were from the stern of the "Rickmers"?

A. I could measure it.

Q. I wish you would measure it and state the distance
ey were?

Mr. HUGHES.—I think you did that a moment ago.

A. Well, we did measure the three—

Q. (Interrupting.) I want him to triangulate the
ips now.

Mr. HUGHES.—He don't know anything about that.

Q. I mean according to the evidence and the charts?

Mr. HUGHES.—If you are going to have him base his
idence upon other evidence, I will object. He can fix
e distances as located upon the chart from the Points.
s to what the evidence shows in respect to the charts
the ships is a question for the Court to make his own
luctions.

(Testimony of John McT. Panton.)

Q. Well, all right. What is the distance on the charts between the point where the "Rickmers" is shown and the point where the "Corona" is shown?

A. From the "Corona"?

Q. Yes. From the stern of the "Rickmers" to the "Corona"?

A. Three-sixteenths of a mile; 1140 feet.

Mr. HUGHES.—That is, between the "Corona" and the "Rickmers"? A. Yes, sir.

Q. What is the distance between the "Mildred" and the "Rickmers"?

A. Substantially the same for the two ships.

Q. Three-sixteenths of a mile?

A. Six thousand and eighty feet is a nautical mile. Not a land mile, but a nautical mile.

Q. How many feet?

A. Eleven hundred and forty feet.

Q. And the "Mildred," you say, was substantially the same? A. Yes, sir; from the "Rickmers."

Q. That is, from the points on the charts, without allowing anything for the length of the ships?

A. Yes, sir.

Q. And without allowing anything for the length of cables out? A. Yes, sir.

Q. Now Captain, assuming that the German bark "Robert Rickmers" of 2,200 tons leaves her anchorage at Port Townsend on the morning of December 25th, 1901, and proceeds under tow of the tug "Tacoma" on her way

(Testimony of John McT. Panton.)

up the Sound to Tacoma. The weather is clear and the wind is light from the southwest. Finally, the wind increases, and the captain of the towboat signals that he is about to take the "Rickmers" to temporary anchorage in Shilshoal Bay. The ship is taken to the leeward of West Point to an anchorage which bears from West Point light north 33 degrees east true a distance of three-quarters of a nautical mile. It is extreme high tide at Shilshoal Bay at 2:49 P. M., and extreme low tide at 10:31 P. M. on the day in question. The "Rickmers" ground tackle is as follows: Her starboard anchor weighs, with stock, 5124 pounds; and her port anchor weighs with stock 4850, and each of her anchor chains are of the following dimensions: Each are stud link chains, of total length of 135 fathoms, and a weight of sixty-three hundred weight; length of link, twelve and three-quarter inches; breadth of link, seven and three-sixteenths inches; size of diameter of link two and one-sixteenth inches; breaking strain in each length of sixteen fathoms, one hundred and seven and one-tenth tons; tensile strength, seventy-six and five-tenths tons; her anchors and chains are certified by Lloyds, and he is equipped with the usual appliances in the way of capstans, compressors, etc. Lying in the bay at the time are three schooners, located as follows: The "Corona," a three-masted topsail schooner of 394 tons, was at an anchorage which bore from West Point light north thirty-eight degrees east true, and distant seven-eighths of a mile, nautical; the "Mildred," a three-masted topsail schooner of 411 tons, was at an anchorage which

(Testimony of John McT. Panton.)

bore from West Point light north twenty-three degrees east true, and distant three-quarters of a mile, nautical; the "Stimson," a four-masted topsail schooner, was at an anchorage which bore from West Point light north twenty-nine degrees east true, and distant one and one-quarter miles nautical. The "Stimson" is a schooner of 701 tons. The "Rickmers" was brought to her anchorage about four o'clock P. M. in fourteen fathoms of water amidships, dropped her port anchor, and paid out forty-five fathoms of chain. It is the custom of Puget Sound ports that the towboat captains in docking vessels in tow up and down Sound assume all the duties of pilot. The captain of the towboat in this case was a licensed pilot and indicated the anchorage to the captain of the "Rickmers" who was a stranger to these waters, this being his first voyage to Puget Sound. Under those conditions and circumstances, did the "Rickmers" display good seamanship and judgment in anchoring in the place and manner indicated?

Mr. HUGHES.—I object to that question as not a proper hypothetical question, not being based upon a correct and proper statement of the facts established by the testimony, and further as irrelevant, incompetent and immaterial.

A. I don't think there was any bad seamanship displayed in the ship being anchored there, especially under the evidence of the weather being moderate and the captain being a stranger, and the tugboat captain always places the ship at her anchorage.

(Testimony of John McT. Panton.)

Q. Now, Captain, assuming all the conditions of the first question, and in addition thereto, the following: The "Rickmers," in coming to her anchorage, split the foundation block of her port compressor, the same being a wooden block, and ten or fifteen fathoms of her port chain runs away. The tugboat, which is standing by, passes a hawser and hauls her back to her former anchorage or perhaps to one a little more inshore. The "Rickmers," while this is being done, overhauls the slack of her port chain and lies to her port anchor, having forty fathoms of port chain out, and having rigged a relieving tackle thereon by using two two-fold blocks, each having a two-inch in diameter hook with a rope rove through them, and stoppered onto the chain and foremast. Her starboard anchor is dropped also, and thirty fathoms of her starboard chain is paid out. Under those conditions and circumstances, what have you to say whether or not those were precautions sufficient and seamanlike, and was the relieving tackle sufficient and seamanlike?

Mr. HUGHES.—We make the same objection to that question as to the preceding one.

A. As under those circumstances, I consider the ship would lie with perfect safety, with both anchors down, and the amount of chain out; and I consider that the rigging of that relieving tackle was a very seamanlike act, and the gear quite strong enough for the purpose of the relieving tackle.

(Testimony of John McT. Panton.)

Q. What would you say as to whether or not the precautions were sufficient?

A. I would say that I consider the precautions quite sufficient.

Q. Assuming, Captain, the conditions of the first and second questions, was it good seamanship under the circumstances of wind and weather and anchorage, for the "Rickmers" to lie in this temporary berth, with two anchors out, having thirty fathoms of chain on her starboard and forty fathoms on her port anchor, stoppered as described?

Mr. HUGHES.—The same objection is made to that question.

A. Yes, sir; I would consider it was good seamanship.

Q. Now, assuming the conditions of the first, second and third questions which I have asked, and in addition thereto, the following: Five hours have elapsed, and it is about 10 o'clock P. M. The wind is from south southwest, veering a point or two each day, and is blowing in gusts up to ten and eleven on the Beaufort scale. The hook on one of the blocks of the relieving tackle is carried away, and the ship begins to drag. The starboard chain is paid out as rapidly as possible, but the anchor does not hold; and another and similar relieving tackle is rigged to the port chain, when it is discovered that the chain is parted and the anchor is lost. The "Rickmers" passes off to leeward, gets athwart the hawser of the "Mildred," carrying away the "Mildred's" jib-boom; gets clear and

(Testimony of John McT. Panton.)

Q. What could he have done?

A. He might have hoisted the head of his fore staysail; and he could have put his helm over and gone forward and given his ship a sheer, especially with that amount of chain on.

Q. Do you think he could have sheered her with his staysail or with his helm so as to have cleared the ship the size of the "Rickmers"?

A. Yes, sir; certainly he could, with the head of his storm sail he could have sheered broadside on his anchor.

Q. I would like to ask you a little more fully under the facts and circumstances, assuming now the questions which I have asked you to state the conditions, what would you have to say whether or not the "Rickmers" was negligent in not paying out more cable when forward of the "Mildred" and "Corona." If she was negligent, why was she negligent, and, if not, why wasn't she negligent. Please answer fully, and give your reasons?

Mr. HUGHES.—Same objection as we made to the former hypothetical questions, and further the question calls for an argumentative answer.

A. Do you mind putting that question to me again, Mr. Ashton?

Q. State whether or not, under the conditions and circumstances which I have mentioned, the "Rickmers"

(Testimony of John McT. Panton.)

was negligent in not paying out more cable when at anchor forward of the "Mildred" and the "Corona"?

A. No, I don't think there was any negligence shown.

Q. Now, why? Answer fully.

Mr. HUGHES.—Same objection.

A. The wind and sea being moderate at that time, I consider she had plenty of chain out, especially as it was only a temporary anchorage.

Q. What would you have to say when the wind freshened and it finally became a storm?

A. I would say that good seamanship would tell a man not to interfere with his cable at all as long as he was holding ground.

Q. Why?

A. The moment it started to blowing hard, paying out chain is very liable to break out the anchor out of the ground and start the ship again, paying out chain would, and probably, as I said before, going right down on top of these other ships.

Q. Assuming that the "Rickmers" had out the length of cable I have referred to, and assuming further she was two hundred and sixty-seven feet in length, and that the "Mildred" bearing from her as contended by claimant, had sixty-five fathoms of cable out, and the "Corona" had sixty fathoms out, and bearing from her as contended by claimant, and as I have stated, what have you to say whether or not the "Rickmers," when

(Testimony of John McT. Panton.)

Q. Ten is sixty-five miles, and eleven is seventy-five?

A. Yes, sir.

Q. What would you consider that? What kind of a blow is that?

A. In the China Sea, I would call it a hurricane or a typhoon.

Q. What is it called in Puget Sound, among sailors?

A. That is a high gale of wind; a very heavy gale.

Q. A storm?

A. Yes, I would call it that; yes, sir.

Q. How does it compare with a hurricane?

A. I don't think there is much to pick or choose between the two. I would as soon be in the one as the other.

Q. I employed or requested you, did I not, to go over the figures of the libelant and see whether there were any items therein which would hardly result from the collision? A. Yes, sir.

Q. The items of damage? A. Yes, sir.

Q. Did you do so at my request?

A. Yes, sir; I did.

Q. Now, did you find any items which you thought were not the direct result of the collision, or which should not be allowed as a result of the collision?

A. Yes, sir; there were a few items, but it is so long ago that I forget what they are.

Q. I would call your attention to Exhibit "C" of the

(Testimony of John McT. Panton.)

libelant, being Mr. Moran's bill for repairs to the windlass. What have you to say to that?

A. I remember that item. I thought it a very heavy bill. It would be ample to buy a new windlass.

Mr. HUGHES.—I object to the testimony of this witness upon that matter for the reason that he is not competent, and that the testimony is argumentative.

Q. What experience have you had in the buying and selling and repair of windlasses?

Mr. HUGHES.—Same objection.

A. Ever since I have been at sea I have been having experience in the repair business. I never did buy a windlass, but I know the price of them.

Q. What is the price of a new windlass?

A. You could get a very fine windlass new, for $1,500; and less than that for a smaller ship, of course.

Q. Now, I call your attention to Libelant's Exhibit "F," being for labor bills, and ask you whether or not you notice any items thereon which could not result from the collision?

Mr. HUGHES.—Same objection; and further it is an attempt to interpose the judgment of this witness to that of the Court.

Q. I will ask you first if you made any memorandum of the items which you thought were not necessary result of the collision?

(Testimony of John McT. Panton.)

other items did you find thereon which in your judgment could not result from this collision?

Mr. HUGHES.—We object as immaterial; the witness could not judge what would result from the collision from an examination of the testimony.

A. The mate's fare paid to Tacoma; and this repairing mizzen on this disbursement sheet which happened before the collision took place at all.

Q. What is the amount of that?

A. December 20, ten dollars.

Mr. HUGHES.—It will be understood that all of my objections, without making them to each question, that the same objection shall be renewed to all of this class of testimony.

Mr. ASHTON.—I agree that Mr. Hughes may be considered as objecting to any part of this testimony under his general objection.

Q. What is the total of this?

A. And labor December 24th, added is thirty dollars; and there is fares from Blakely to Seattle and boat hire is seven dollars.

Q. What is the total amount of those items which is added up there?

A. Then there is master's wages for master and crew prior to December 25th, fifty dollars. That is prior to the accident.

(Testimony of John McT. Panton.)

Q. Now, why do you consider the wages of the master and mate and crew is not a proper charge?

A. There was no collision before the 25th of the month.

Q. And those items are all prior to the 25th of December? A. Yes, sir.

Q. Now, Captain, I call your attention to Libelant's Exhibit "F33," which with the exception of a few items contained almost the entire bill is for sea store?

A. Yes, sir, I remember it.

Q. Do you remember that bill? A. Yes, sir.

Q. Libelant's Exhibit "F33"? A. Yes, sir.

Q. Why did you report to me that in your judgment that was not a necessary charge arising from the collision?

Mr. HUGHES.—We object to that as assuming something not in evidence; incompetent, and leading.

A. I considered that the ship was only getting stores for sea, for these—it was sea stock, and she would have had to get it.

Q. Those are such stores as are used at sea, with a few exceptions?

A. Yes, sir, with a few exceptions it is for sea stock.

Q. I think that is all that I want to ask. Are these items in Libelant's Exhibit "F33"—or state whether or not these items in Libelant's Exhibit "F33" are such as are usually purchased by ships before going to sea?

(Testimony of John McT. Panton.)

A. Yes, sir; purchased for sea stock, or for the voyage.

Q. I think that is all.

Cross-examination.

(By Mr. HUGHES.)

Q. I understood you to say that you had read over the testimony in this case. Is that correct?

A. I read part of it. I don't know about it all. I don't know as I have seen it all.

Q. What part did you read, do you remember? The testimony of the officers and crew of the "Rickmers"?

A. I did some of it; not all.

Q. In giving your testimony, have you governed yourself at all by that testimony, or your conclusions either, from the reading of that testimony?

A. Oh, well, it might be a little bit that way, yes, sir.

Q. Captain, in answering the interrogatories that I propound to you, I wish to have you devest from your mind anything that you may have read in regard to the case? A. Yes, sir.

Q. And any discussion between you and Mr. Ashton in regard to the case, or its facts, or anything embraced in the questions propounded to you by Mr. Ashton, and simply to answer my questions as a mariner, without any reference to any other consideration except what is presented in the question. Will you do that? A. Yes, I will.

(Testimony of John McT. Panton.)

Q. I believe you say you have had a good many years' experience as a mariner? A. Thirty years.

Q. Altogether on steam vessels?

A. Oh, no. I was brought up on a sailing ship, and was on sailing ships for eleven years; and the last three years I was chief officer on a sailing ship before going on steam.

Q. Captain, if a ship came to anchor under the shelter of a shore in which direction the wind was blowing from fifteen to seventeen miles an hour, and that ship were in ballast, and a large ship, say, having a capacity of twenty-one hundred tons, net register, or more than twenty-one hundred tons, net register, and a length of four hundred and sixty-seven feet, and a breadth of beam of forty-five feet, would you think that you would put out no more than forty-five fathoms of chain?

A. That is quite enough, with the force of wind. The standard rule is double the depth of water.

Q. You should govern yourself by that rule in answering that question? A. Yes, sir.

Q. With a wind of fifteen to seventeen miles an hour. In such a situation you think forty or forty-five fathoms of chain would be sufficient?

A. Quite sufficient, yes, sir.

Q. When you say quite, you would not think of putting out less than that?

A. I would not pay out more than forty to forty-five fathoms with what was on the windlass.

(Testimony of John McT. Panton.)

Q. You would not pay out more than forty or forty-five fathoms, with a wind blowing fifteen to seventeen miles per hour?

A. There are so many questions governing that. You might say—

Q. (Interrupting.) Governing yourself solely by the rule of good seamanship for the safety of your vessel, with a wind of that kind blowing squally, say that the force or velocity of the wind is irregular, would you consider that forty fathoms of chain was sufficient?

A. Oh, yes, quite so.

Q. Would you think less than that sufficient?

A. You would be perfectly safe in making it thirty fathoms; that is, I am talking now of a modern ship furnished up to date, with the proper weight of anchor and equipment.

Q. Do you know what the equipment of the "Rickmers" was?

A. Only by what I have read.

Q. Would you say from what you know of the "Rickmers" that on a stormy night, with a storm and night coming on, the wind blowing from fifteen to seventeen miles an hour, that thirty fathoms would be sufficient with one anchor, Captain, to hold that kind of a ship, in ballast?

A. With a wind not stronger than seventeen or eighteen miles an hour, I would say, yes, that would hold it.

(Testimony of John McT. Panton.)

Mr. ASHTON.—We object to these questions as assuming a state of facts not in line with the facts existing at that time in the evening.

Q. If the wind increased, what would you do?

A. I would pay out more chain.

Q. As the weather became more stormy, you would pay out more chain?

A. Well, I don't know. I won't say that. If I had to pay out more chain, I would probably have to pay out more and not wait, because it is a bad plan to commence to give a ship chain more than once.

Q. If the storm increase, you think, Captain, then, you would pay out more chain?

A. Yes, sir; probably I would.

Q. And if you had that kind of a storm, and night coming on, and a falling barometer, and in the anticipation of a possible increase of the storm, you would pay out more chain? In the first place?

A. As long as the wind had not increased very much; but if the wind increased to say thirty miles an hour, and my anchor seemed to hold, I don't know but what I would have done it. You have to be governed, sir, by the place you are in, and the location, and what shelter you have got.

Q. Suppose when you paid out your forty fathoms of chain you put down your compressor in such a way that when the ship takes up the chain she snaps her compressor. Under such conditions as I have stated, what would you say would be the cause of that?

(Testimony of John McT. Panton.)

A. That would be a hard thing to say.

Q. Would you think the tackle was in good condition if it would not stand a strain like that, of such a ship?

A. I would not say it would not be in good condition, because such things happen at the very most unlooked-for moment. That has been my experience aboard ship.

Q. The compressor being properly built and tested, should have a capacity of enduring a strain greater than the cable on the anchor—the chain on the anchor?

A. It is supposed to be built strong enough to hold the chain if you wanted to use it.

Q. Would you attribute the breaking of the compressor under such circumstances to the deficiency of the compressor or the manner in which it was operated?

A. I should say—well, I would not say inefficiency of the block. I would say that the ship had a little way on her and put too much strain on her compressor block.

Q. And if that compressor was not fastened down at the proper time, that is, if they fastened it down while the ship had too much way of her to stand the strain?

A. I could not say. That would be one way of breaking it; or there could have been some flaw, I could not tell.

Q. But if the compressor had been in proper condition, and the anchor paid out and the compressor fastened down in the proper way, it would not be apt to

(Testimony of John McT. Panton.)

break with the wind blowing say in the neighborhood of fifteen to seventeen or twenty miles an hour?

A. No, sir, I don't think so.

Q. Ought not to break if it were blowing at that velocity? A. No, sir, it should not.

Q. Now, suppose—and I ask you all the time to keep out of your mind, anything that you have read or discussed about this case, but answer my questions just as if you never heard of the "Rickmers" or anything else, but what is in my question?

A. Yes, sir, certainly; I am doing that.

Q. Suppose that after the ship came to anchor and forty fathoms of chain paid out, and the compressor is made fast, and the compressor gives way and the ship runs out ten or fifteen fathoms of chain, and in the meantime, we will suppose that the ship drifts until it comes down upon or near another ship that is in the neighborhood of three-sixteenths of a mile distant. Could that happen without the chain parting, or the anchor dragging?

A. No, sir, I would say it would not.

Q. So that if the ship in question did drift from her position which she came to first—

A. (Interrupting.) The first anchorage, you mean?

Q. Yes—in the neighborhood of three-sixteenths of a mile, and down upon or near to another ship at anchorage, she must either have parted her chain or else have dragged her anchor? A. Yes, sir.

(Testimony of John McT. Panton.)

Q. Suppose in case she dragged her anchor without the parting of the chain, would that indicate that she had not scope of chain to hold her there with that velocity of wind and with her exposure by reason of being in ballast? A. No, sir.

Q. You think it would not indicate that?

A. No.

Q. What would it indicate, if it indicated anything?

A. I should think that the anchor had dragged.

Q. But, I say, if the chain had not parted, the anchor must have dragged? A. Yes.

Q. Would it be less likely to drag if more chain had been paid out? A. No, it would not.

Q. Why did you say awhile ago that if the wind was strong you would pay out more chain?

A. Exactly. I did say so, and I say so still.

Q. As a matter of fact the more chain there is out, the anchor is less likely to drag?

A. Yes, sir. A seaman never lets go of more chain than he is obliged to.

Q. If the ship in question dragged down on to another, a distance of three-sixteenths of a mile, and the tugboat which originally brought her to anchor overtook her and made fast to her and hauled her back to her original anchorage or further in, what would you do if you were master of the ship in question with the port anchor out?

(Testimony of John McT. Panton.)

A. I would probably haul some of it up. You mean to say how would I handle my ship afterwards?

Q. With respect to the anchor in question?

A. I would probably hold off or paid out some more, and then probably towed ahead and let go my starboard anchor and paid out more of my chain.

Q. Would you have a tug tow you ahead with your anchor dragging?

A. Oh, no, no; certainly not.

Q. What would you do? Hoist your anchor?

A. Either hoist or pay out more chain and let go my second anchor.

Q. No, before you were towed back? What I want to get at is wouldn't you have hoisted your anchor before being towed back?

A. That would depend. If the anchor held, I would let the ship moor for the night. I would not hoist the anchor. I would tow ahead and let out my other anchor.

Q. But you would not want your first anchor on holding ground right up against another ship, would you?

A. Yes, sir. That would not make it any different as long as it was not the weather anchor.

Q. You would leave it out as a lee anchor?

A. Yes, sir; and then my ship would be to the wind. If the wind were coming from the west with the ship lying here, and the wind being due west, and both my

(Testimony of John McT. Panton.)

anchors down, that would be the best thing I want. One here and one here.

Q. Then your strain would be, as long as the wind kept in that direction, all on your other anchor?

A. On my weather anchor, yes, sir.

Q. And your ship would be riding entirely on your starboard anchor in that case?

A. Probably. That is, if the wind kept in the same direction.

Q. If it remained in a southerly direction, veering from southeast to southwest then the strain would be on your starboard anchor? A. Yes, sir.

Q. Now, Captain, if the distance you were towed back by the towboat, before putting out your starboard anchor was 1140 feet, wouldn't it be necessary to heave your port anchor? Would it be necessary to drag it?

A. Well, I don't know as you could drag it. I doubt if the towboat could tow the ship with it dragging.

Q. What I want to get at is would you hoist or drag the anchor?

A. Of course, you would have to heave it; yes, sir.

Q. Then if you were to be picked up under those circumstances the first thing you would have your crew do would be to hoist your anchor off the ground?

A. Yes, sir; if I had three-sixteenths of a mile to go I would. If I got the crown of the anchor off the bottom, I probably would not have it heaved up all the way.

Q. Don't you think it would have been wiser to have heaved it up altogether to see that it had not fouled on

(Testimony of John McT. Panton.)

anything or anything wrong with it, especially after a strain put upon it sufficient to break your compressor?

A. Probably I would pull it up; yes, sir.

Q. You could not be certain, when a strain had come upon it sufficient to break the compressor which itself ought to have been as strong as the anchor chain, that there would not be something wrong with the anchor or chain until you raised it and examined it?

A. Yes; might have been a turn of the chain around the stock of the anchor.

Q. And a strain sufficient to break the compressor might also have broken or at least cracked a link in the cable, in the chain.

A. Well, that is very improbable.

Q. Well, Captain, the compressor was or should have been stronger than any link in that chain?

A. Yes, sir.

Q. And a strain which parted the compressor, or broke the compressor, might at least impair the chain, mightn't it?

A. Oh, no; I wouldn't say that; I have seen a compressor break many times and the chain not touched.

Q. And you have seen the chain break without the compressor breaking?

A. I have seen the chain break right in top of the windlass, Mr. Hughes.

Q. Now, suppose, Captain, that the vessel was towed back under those circumstances without the chain being

(Testimony of John McT. Panton.)

taken in sufficient to lift the anchor off the ground; what would be the position of the port anchor? Would it be moored in the way you have described?

A. Yes, sir; it would probably be to the north'ard.

Q. And eastward of where the ship was riding, too?

A. Yes, sir; probably.

Q. It would be necessary for it to be in that direction? A. Yes, sir; if it were, it would be.

Q. If it were out in that way, the starboard anchor paid out and the ship riding from her starboard anchor she would be carried by her starboard anchor?

A. Yes, sir; certainly.

Q. Captain, in order to overcome the damage to the port ground tackle, caused by the breaking of the compressor, the ship put a tackle made by putting a band consisting of a four-and-a-half inch manila hawser around the chain—around the cable—and attaching a luff-tackle by means of a hook, say from an inch and a half to two inches in diameter into this band—

A. (Interrupting.) Strapped?

Q. (Continuing.) At the one end—

A. (Interrupting.) Strap is the proper term.

Q. (Continuing.) —and fastened, and the tackle made fast by a hook at the other end on a strap so-called around the foremast. I will ask you whether or not the capacity or strength of this tackle would be equal to the strength of the cable?

A. Oh, no; no.

(Testimony of John McT. Panton.)

Mr. ASHTON.—We object to this line of examination as not cross-examination.

Q. In that case, the strain, whatever it was, that came on the port chain would be carried by the hook and this tackle? A. Not necessarily.

Q. Where else would it be?

A. By the windlass.

Q. How?

A. You have got your windlass. When you put tackle on like that it is to relieve the windlass.

Q. That is, to take the strain off the windlass?

A. Yes. If the ship is jumping any the rope will take—the rope will give and the chain will not give, and it takes the weight off the windlass; but I will say that the modern windlass is strong enough.

Q. If the windlass was broken, it would be necessary to take the strain off on this tackle?

A. Certainly.

Q. If the time of the breaking of the compressor, the windlass was unable to hold the chain, and the chain slipped out ten or fifteen fathoms, then whatever strain came on the port anchor would be taken by the tackle?

A. Yes, sir.

Q. And would fall on the hook made fast by the strap to the anchor?

A. What would be the size of the rope? You told me the size of the hook, but did not give the size of the rope.

Q. The rope I think—

(Testimony of John McT. Panton.)

A. (Interrupting.) Had a three and a half inch rope I think.

Q. I think in this case it is not given, but of necessity was at least as strong as the hook? A. Yes, sir.

Q. Now, I will ask you if the strain which finally came upon that hook was sufficient to straighten out the hook, do you think that that strain would be sufficient to part the chain unless it had been impaired at the time the compressor was broken?

A. No, I would not say it, in the first place, when the compressor was broken I don't believe that would break the chain, Mr. Hughes.

Q. Suppose the chain broke at the same time? The facts are that the compressor broke and the ship dragged when she first came to anchor, but afterwards she was towed back and the starboard anchor paid out to windward, and in towing her back, her port anchor was not hoisted off the ground? Assuming that to be the case, and that her port chain was made fast by a luff-tackle such as I have described, and that about ten o'clock that night the hook which attached this luff-tackle to the strap about the cable straightened out so that the luff-tackle ceased to be of any use, and at that or some time previous the anchor was lost, the chain had parted. When would you say it was most likely that the chain parted and the anchor was lost?

Mr. ASHTON.—We object to this as not cross-exam-

(Testimony of John McT. Panton.)

ination, and assuming hypotheses and conditions which are not justified from the record.

A. That is a pretty hard question to answer, Mr. Hughes.

Q. In other words, what I want to get at is, would the strain that straightened that hook be as likely to part the chain as the original strain which broke the compressor? At the time the compressor broke?

A. No.

Q. Would there exist sufficient strain, with the starboard anchor out, being the anchor to windward, to cause the chain to part if it was injured when the compressor broke? A. No.

Q. You can't account for any strain which would be sufficient, could you, as long as the starboard anchor out to windward?

A. No, I don't think so. I would put that down to an act of God.

Q. Or a defective link?

A. I have seen my chains—I have let go my anchor in a harbor and the chain give a jump and come down on top of the windlass and snap; and we would find the broken link, and it was just as good as ever.

Q. Now, if the vessel was dragging down for half a mile and toward another ship riding at anchor, she couldn't deviate her course by putting up her sails?

A. Not a big ship like that; no.

Q. Why would the size of the ship prevent her deviating her course?

(Testimony of John McT. Panton.)

A. No, sir; it was the storm, and they could not set these sails on the ship in the storm in that short a time unless there were sails up.

Q. Might have run up a fore staysail?

A. Might have.

Q. If you had a very high wind you could not put up much sail?

A. Yes, you could put up sail. Might put up the head staysail up.

Q. By putting up the head staysail, it would be likely to change his direction?

A. Very little with a big ship like that.

Q. Well, a very little would make quite a difference in width while traveling half a mile?

A. Oh, no; no, sir.

Q. Do you think the time would not be sufficient on board ship while she was dragging that distance to enable her to put up some sail?

A. No; because you see the men would all be working at the chains and anchors, and they don't as you know carry any too many men these days. Probably all told that ship hadn't twenty-five men on board, all told.

Q. What would they be doing with the chains and the anchors?

A. Probably paying out chain to stop the ship from dragging.

Q. How many men would it take to pay out chain on one anchor?

A. I have seen all hands get out.

(Testimony of John McT. Panton.)

Q. What I mean is how many men would it require?

A. That depends. If the ship is taking her chain all right, it would not require many men, but if she wasn't taking her chain, and you had to bring it out of the windlass, it would require all hands to bring it out of the windlass.

Q. Would it be possible to put up any sail? Would any sail stand in wind blowing sixty-five to seventy-five miles an hour?

A. Yes, sir; the storm sail would stand all right.

Q. Do you think any man could put it up to hold in a wind like that?

A. Yes, sir; I have seen men could get the head sail up in a very heavy gale.

Q. If your anchor were out and dragging on the ground, with a weight of say ninety fathoms of chain, or more, that would keep the head of the ship to the wind?

A. That is all it would do. The sail would be absolutely no use if the anchors were dragging.

(Testimony of witness closed.)

GEORGE N. SALISBURY, a witness on behalf of libelant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. HUGHES.)

Q. Please state your name.

A. George N. Salisbury.

(Testimony of George N. Salisbury.)

Q. What official position, if any, do you hold, Mr. Salisbury?

A. I am the officer in charge of the United States Weather Bureau at Seattle.

Q. How long have you held that position?

A. For nine years I have been serving in that capacity.

Q. In this city? A. Yes, sir; for nine years.

Q. You occupied that position on the 25th of December, 1901? A. I did.

Q. What, in brief, are your duties in that position, Mr. Salisbury?

A. Keeping a record of the weather and the climatic conditions of the State of Washington, and collecting climatic statistics for the State of Washington.

Q. In what way do you ascertain and determine the weather conditions in this city?

A. There are several features which go to make up the weather: The temperature, and the direction of the wind, and the wind's velocity, and the rainfall; and for ascertaining the features of these elements, I have certain instruments.

Q. What instruments have you for ascertaining the velocity of the wind?

A. An instrument called the anemometer shows the velocity which the wind is moving past a given point.

Q. Does that record the velocity?

A. Yes, sir; that records the velocity in such a

(Testimony of George N. Salisbury.)

method that the number of miles per hour can be ascertained.

Q. Does it record it automatically?

A. Yes, sir; the record is an automatic record, and from it one ascertains the velocity.

Q. Is the instrument which you speak of the one in use on the 25th day of December, 1901, at your office in this city, or at the weather bureau?

A. There was one in use at that time.

Q. Was that instrument such an instrument and in such condition as to record correctly the velocity of the wind during the day and night of the 25th of December, 1901?

A. Yes, sir; the instrument exposed at that time was regarded as a reliable instrument, and was the official one, and had been tested and found correct.

Q. Where was that instrument located?

A. That is located on the roof of the building in this city known as the New York Building.

Q. Do you know what the height of that building is, or what the elevation of the anemometer is above the roof of the building?

A. The elevation above the roof at that time was twenty-two feet.

Q. Do you know what its elevation was above sea level at that time?

A. One hundred and twenty-one feet above ground.

Q. What was its elevation above any surrounding buildings lying to the southeast, south, or southwest?

(Testimony of George N. Salisbury.)

A. Was it obstructed, is that your question?

Q. Yes.

A. It was unobstructed.

Q. What records do you make and keep in your office of the velocity and direction of the winds?

A. There is an hourly record of the direction, and also there is an hourly record of the movement of the wind, the miles per hour for each previous hour; that is, from one hour to another.

Q. That is to say, at 12 o'clock midday, the records there recorded is the hourly record, would be the hourly record for the preceding hour, and so for every hour in your record? A. Yes, sir; that is what I mean.

Q. How is that made up?

A. That is made up from the automatic record.

Q. In what way?

A. It is tabulated at hourly intervals from the automatic record.

Q. On this tabulation, do you take for the hourly record, the average velocity as shown by the automatic record, or do you determine—for instance, your record shows at 4 o'clock P. M. of the 25th of December a stated velocity for the preceding hour. What does that represent?

A. That represents the movement of the wind for one hour, for the previous hour. That is, that means that the movement of the wind for one hour, for the previous hour, had been twenty miles, or twenty-four miles, or thirty

(Testimony of George N. Salisbury.)

miles, as the case may be, for the preceding hour, so much movement for one hour.

Q. Does this hourly record give you the maximum velocity at any instant of time, or any short interval of time?

A. That would not give the maximum velocity of any instant of time, but the average for the hour.

Q. Is it supposed to give the distance the wind traveled in one hour at the rate of speed at which it has passed over your anemometer? A. Yes, sir.

Q. Can you, from the records in your office, give me the velocity of the winds at the city of Seattle on the afternoon and evening of the 25th of December, 1901, beginning at four o'clock P. M. of that day, and ending at twelve o'clock midnight; and if so, please do so?

A. I can give you the hourly movement at certain times on that day.

Q. Give me the hourly movements, please?

A. The hourly movement at what time?

Q. At four o'clock P. M.?

A. The hourly movement preceding four o'clock was seventeen miles—the next hour, do you say—was fifteen, the next sixteen, the next fourteen, the next seventeen, the next seventeen, the next was seventeen, the next twenty, the next twenty-four, and the next twenty-five.

Q. I wish in order that we can get that properly down I would like to have it by the hour?

A. All right. At four o'clock the hourly movement

(Testimony of George N. Salisbury.)

was seventeen miles for the preceding hour; at five o'clock for the preceding hour fifteen miles; six o'clock, sixteen miles; seven o'clock, the hourly movement was fourteen miles; eight o'clock, seventeen miles; nine o'clock, seventeen miles; at ten o'clock, seventeen miles; eleven o'clock, twenty miles; twelve o'clock, twenty-four miles per hour; one o'clock, twenty-five miles.

Q. Now, have you any data showing the maximum velocity or extreme velocities for any period of time during the hours you have mentioned?

A. Yes, sir; I have the exact velocity at five o'clock on the 25th, and I have the maximum or extreme velocity that occurred during the twelve hour period from five o'clock P. M. of the 25th to five o'clock A. M. of the 26th.

Q. Will you state what the maximum velocity was at five o'clock—is that maximum or extreme?

A. Maximum and extreme both.

Q. (Continuing.) Of the maximum or extreme velocities at five o'clock P. M. of the 25th of December, 1901?

A. Do you want it for five o'clock A. M. of the 26th?

Q. No, I don't care anything about that?

A. I find that I will be unable to answer that unless I had the right record. I find I have the wrong record. I can give you the maximum between five o'clock P. M. and from that on.

Q. If you are unable to give it, you may give the maximum and extreme velocities which occurred after five

(Testimony of George N. Salisbury.)

o'clock P. M. and up to twelve o'clock midnight on the 25th of December, 1901?

Mr. ASHTON.—I think we will object to it as incompetent, and not the best evidence.

A. I see recorded here a maximum velocity of thirty-two miles per hour from the southwest which occurred at 11:40 P. M. of the 25th.

Q. At that time, the wind was blowing from the southwest?

A. Yes, sir; from the southwest, at 11:40 P. M.

Q. What is the maximum velocity?

A. Well, that is the highest which occurred during the time, the highest wind which occurred during the whole time.

Q. Then between 4 o'clock P. M. and midnight of that day, was there any higher wind blowing at any time than thirty-two miles per hour?

A. There was none blowing, higher than that, at the point of observation.

Q. Mr. Salisbury, do you have the automatic or original record in duplicate, or keep the original in your office, for the hours I have mentioned, of December 25th, 1901?

A. The automatic record itself is not retained in the office. It is forwarded to the central office at Washington.

Q. And you do not keep a copy of a duplicate of it?

(Testimony of George N. Salisbury.)

A. No, sir, I do not keep a duplicate of it. Merely a tabulated statement.

Q. And your testimony is given from the tabulated statements which are made in your office?

A. Exactly.

Q. And these tabulated statements are taken from the automatic record?

A. The tabulations are made from the automatic record and are carefully verified both at the office here and at the chief office at Washington.

Q. Now, have you any record from which you can give me the directions of the wind during the period I have mentioned from four o'clock in the afternoon of the 25th of December, 1901, up to twelve o'clock midnight?

A. I can give you the hourly direction for that time, each hour.

Q. Please do so?

Mr. ASHTON.—I suppose my objections being that it is incompetent, and not the best evidence, can be urged to most any of these questions without continually repeating it?

Mr. HUGHES.—If you wish it, except, of course, I think you should point out to me when any new objection is urged, so that I might supply any deficiency if my attention were called to it.

Mr. ASHTON.—Well, perhaps, I had better make my objections to such questions as they come in.

(Testimony of George N. Salisbury.)

A. At four o'clock the direction was southeast; five o'clock, southwest; six o'clock, southeast; seven o'clock, south; eight o'clock, southeast; nine o'clock, southeast; ten o'clock, south; eleven o'clock, south; and twelve o'clock, southwest; and one o'clock, southeast.

Q. Now, what does this record represent? What does it show?

A. The direction of the wind at the hour; or its general direction, for the hour preceding.

A. It represents the direction of the wind at the hour.

Q. At the particular time the observation is made?

A. Yes, sir.

Q. Do you have any record for the observations for the periods intermediate between the hours?

A. No, sir; I have not.

Q. Do your records show any other facts than those to which you have testified respecting the velocity or the direction of the wind upon the date and at the hours mentioned?

A. There is a record which I have not with me, I left it at the office, which would give the direction and velocity of the wind at five o'clock P. M. on the 25th of December; I could get that by telephoning for it.

Mr. HUGHES.—Would you be willing to have him do that, instead of bringing it over here?

Mr. ASHTON.—Oh, yes.

(Testimony of George N. Salisbury.)

Cross-examination.

(By Mr. ASHTON.)

Q. You stated that the velocity of the wind was twenty-five miles per hour at one o'clock midnight, of the 25th and 26th of December, 1901. What was the velocity at two o'clock that night?

A. At two o'clock, the velocity was twenty-three miles.

Q. And at three o'clock?

A. Also twenty-three miles.

Q. And four o'clock? A. Eighteen miles.

Q. And five o'clock? A. Sixteen miles.

Q. Now, Mr. Salisbury, the New York Building is one of the highest buildings in the city of Seattle, isn't it?

A. About as high as any of them.

Q. And located upon one of the principal streets of Seattle?

A. It is located forty-five feet above sea-level.

Q. You mean the foundation of the block; the base of the building?

A. Yes, sir; the curbstone at the base of the building.

Q. The curb of the street is forty-five feet above sea level? A. Yes, sir.

Q. And how many miles is it, do you think, from West Point?

A. Well, I couldn't answer that. I have no knowledge of the distance.

Q. What would be your idea of the distance, simply

(Testimony of George N. Salisbury.)

for the Court, who might not be as familiar with the locations?

A. I have an idea that it is about six miles, but that is not accurate.

Q. You think that it is about six miles distant from Shilshoal Bay?

A. I am merely guessing at that. I have no accurate knowledge of the distance.

Q. Just one more question. I understand that the anemometer would record the velocity of the wind at the point in the air or the heavens where the anemometer is in operation? A. Yes, sir.

Q. And it would not record it at any other point in the atmosphere other than where the anemometer was located?

A. It would not record it, although it might give an idea of what it was.

Q. And you could not get a record at any other point other than where the anemometer is located?

A. Certainly not; it merely records that point.

Redirect Examination.

(By Mr. HUGHES.)

Q. Mr. Salisury, please give the maximum velocity at five o'clock on that day that I have mentioned?

A. The maximum velocity on the 25th of December, 1901, was twenty-three miles per hour, from the south.

Q. Was that at the hour?

A. No, sir; that was the maximum up to the hour.

(Testimony of George N. Salisbury.)

Q. When did that maximum occur, can you tell?

A. The maximum occurred some time that afternoon, as near as I can tell.

Q. Do you know whether it was before four o'clock that it occurred?

A. I would be unable to tell that.

Q. You have given the direction of the wind at that hour? A. Yes, sir.

(Testimony of witness closed.)

And thereupon, the further hearing and taking of testimony herein was continued to January 23d, A. D. 1904, at 10 o'clock A. M.

At Office of Struve, Hughes & McMicken,
Seattle, Washington, January 23d, A. D. 1904, 10 A. M.
Present: E. C. HUGHES, for Libelant.
J. M. ASHTON, for Respondent and Claimant.

Continuation of proceedings pursuant to adjournment, per agreement, as follows, to wit:

H. H. MORRISON, a witness for and on behalf of respondent and claimant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ASHTON.)

Mr. ASHTON.—We will call Mr. Morrison my witness for the present?

(Testimony of H. H. Morrison.)

Mr. HUGHES.—Yes.

Q. (By Mr. ASHTON.) Were you the captain of the tug "Tacoma," which towed the "Rickmers" into her anchorage at West Point on Christmas day, 1901?

A. Yes, sir.

Q. Were you duly licensed to pilot in the waters of Puget Sound at that time?

A. I carry a mate's and pilot's license.

Q. Had you a United States license as inspector?

A. I had.

Q. Was there anyone acting as pilot on the tug other than yourself at the time?

A. Had a licensed mate.

Q. Who was in command of the tug as captain and pilot at the time?

A. I was most of the time.

Q. Did you have any superior office as master of the tug? A. No, sir.

Q. Was there anyone on board the "Rickmers" who directed the movements of the tug?

A. Yes, sir.

Q. Who was there on board the "Rickmers" under whose orders or directions you were in the navigation of the tug? A. At what time do you mean?

Q. At the time you were towing the vessel from Port Townsend to Tacoma?

A. Towing it, I was in charge; but when we came to anchor, the captain of the ship was in charge.

(Testimony of H. H. Morrison.)

Q. What I am getting at, Captain, is, who was it determined to lay up at Smith's cove, or at Shilshoal Bay?

A. To anchor the ship?

Q. Yes, sir. A. I did.

Q. How was the wind at that time, Captain, if you remember? A. Southeast, and quite fresh.

Q. How was the wind on the way down from Port Townsend? In the same quarter?

A. In the same quarter, southeast, all the way up.

Q. When you determined to lay up at Shilshoal Bay, did you make an expression of that determination to your tow, to the "Rickmers"?

A. Didn't need to. Anyone could see it was blowing too hard coming up and freshening up.

Q. What I mean is: Did you signal the "Rickmers" that you were going in?

A. Yes, sir; I signaled them to get their anchor ready, and haul in his port braces.

Q. How far were you off West Point at that time?

A. Do you mean the time I turned in?

Q. Yes, sir, at the time you left off the regular course to Tacoma, how far off the point?

A. Probably two and a half or three miles, about northwest from the point.

Mr. ASHTON.—That is all that I care to ask Captain Morrison, Mr. Hughes.

(Testimony of H. H. Morrison.)

Cross-examination.

(By Mr. HUGHES.)

Mr. HUGHES.—I want to make Captain Morrison my own witness. There is no cross-examination of the Captain as your witness.

Mr. ASHTON.—Then, in fairness, to you, Mr. Hughes, you should, of course, know that I am through with my case and I had better say so here. Of course if there is any little thing hereafter—

Mr. HUGHES.—You may make your note that you rest your case and that any little matter of correction or anything like that may be put in later.

Mr. ASHTON.—I am not pleased with the drawing of the compressor block; I don't like the drawing. I may want to get a better drawing, but I don't believe I will, because I don't see how I can.

Mr. HUGHES.—I think that shows the idea. There is no cross-examination of Captain Morrison.

Mr. ASHTON.—That is the case for the respondent and claimant.

Mr. HUGHES.—Let the record show that Captain Morrison is now called as our witness.

Direct Examination.

(By Mr. HUGHES.)

Q. Captain Morrison, have you testified that you

(Testimony of H. H. Morrison.)

were the master of the tug "Tacoma" which towed the "Robert Rickmers" to her berth in Shilshoal Bay on the afternoon of December 25th, 1901?

A. Yes, sir.

Q. Why was she taken to that place?

A. The weather looked bad; in fact it was blowing too hard to make it safe to go through.

Q. Where was she destined? A. Tacoma.

Q. At what time did you go in there to Shilshoal Bay?

A. Well, between three and four o'clock.

Q. Describe what occurred there when you first came in, and what situation you found?

A. I went into Shilshoal Bay and found three vessels loading, and when he got his anchor out, I took her up ahead and a little to one side of the "Corona," to get in the best berth I knew, and he let go with his anchor, and seemed to be pleased with the berth; and she dragged.

Q. Which anchor did she let go?

A. The port anchor.

Q. Do you know how much chain he payed out at that time? A. I do not.

Q. Did not advise you, did he? A. No, sir.

Q. I will ask you to state what that situation is, whether it is a good anchorage there?

A. It has been a harbor ever since I have been tug

(Testimony of H. H. Morrison.)

boating. Ships have been riding there ever since I can remember.

Q. How long have you been a master of tugboats?

A. Fourteen years, going on fifteen.

Mr. ASHTON.—We will object to this; not the best evidence.

Q. Have you frequently anchored sailing vessels there before? A. Yes, sir.

Q. You are familiar with the anchorage in Shilshoal Bay? A. I am.

Q. And in the different portions of Shilshoal Bay?

A. I have sounded it all over a dozen times.

Q. What is your opinion as to whether the berth to which you took the "Rickmers" was or was not a good safe berth, considering the weather, the character of the weather, and the character of the wind, and all other circumstances, including the location of the other ships?

Mr. ASHTON.—We object to that as irrelevant in this action at this time.

A. Well, I consider it the best berth which was vacant at that time.

Q. What do you say as to whether it was a safe berth, in your judgment?

A. I considered it a safe berth.

Q. Now, you stated that he had put out his port anchor which dragged? A. Yes, sir.

Q. It appears from the testimony in this case that

(Testimony of H. H. Morrison.)

after putting out the port anchor, when the ship took up the strain, or it took up the slack in the chain so the strain came on his riding chock, or what is called his compressor, which held the chain and took the strain from the windlass broke. Did you ever learn of that fact before?

A. Not until the next day after she broke. They told me that the compressor, that is the riding chock, carried away.

Q. Now, you have stated that the ship dragged her anchor. Tell what occurred and where it dragged to?

A. He dragged back near abreast of the "Corona," near the "Corona," dragged by her, and then I went alongside and gave him the hawser and told him to hoist his anchor, and I would go ahead and tow him back and he could use both anchors.

Q. Before going further, I want you to state what distance he was from the "Corona," when he first put out his anchor and you gave him the berth. About what distance was he from the "Corona"?

A. Well, I should judge from a quarter to three-sixteenths of a mile; a good safe berth; what I would consider a good safe berth.

Q. Then would you say that she dragged in the neighborhood of three-sixteenths of a mile?

A. Well, she dragged back abreast of the "Corona," yes, sir.

(Testimony of H. H. Morrison.)

Q. What reason, if any, was there for your not overtaking her sooner and taking hold of her?

A. We had got our hawser in.

Q. They had cast off your hawser?

A. Yes, sir.

Q. And you had to get that in so as to prevent its fouling before you went back there?

A. Yes, sir.

Q. And you went back as soon as you could?

Mr. ASHTON.—We object as leading.

A. I went back and first attempted to put the hawser—in our parlance, put the line on him; and was probably ten minutes clearing properly from where we had the line on him. Then I turned around and put the hawser on him and took him up ahead to a good safe berth while he was backing his anchor.

Q. Where did you take him the second time with reference to the place where he put out his first anchor?

A. A little further ahead from where I first anchored him.

Q. A little further inshore, do you mean? Or a little further west—or north?

A. About the same soundings we had; twelve fathoms.

Q. You were ahead of course?

A. We were ahead on a short hawser.

Q. In your opinion were you more nearly ahead of

(Testimony of H. H. Morrison.)

the "Mildred"—more nearly inshore from the "Mildred," or more nearly inshore from the "Corona"?

A. He was about midway between or half way between the two, so in case he dragged he would go between them.

Q. And in anchoring him in that position, I will ask you whether you anchored him on a line with them, or neared inshore, further inshore?

Mr. ASHTON.—We will object as leading.

A. Well, he was a little off shore from the "Corona," and a little inshore from the "Mildred."

Q. That was at the time he was taken back to his second anchorage? A. Yes, sir.

Q. Here is a diagram which is marked Respondent's and Claimant's Exhibit No. 12. On this diagram, down here, is the letter "S"?

A. Yes, sir; I see it there.

Q. On this diagram is given the location of the different vessels as shown you by some of the witnesses for the claimant and respondent, and also some of the witnesses for the libelant, as being the approximate location of the four ships after the "Rickmers" came to her second anchorage. The letter "S" represents the location of the schooner "Stimson"; the letter "C"—or rather, the cross at the letter "S"—represents the location of the "Stimson"; the cross at the letter "C" represents the location of the "Corona"; the cross at the

(Testimony of H. H. Morrison.)

letter "M" represents the location of the "Mildred," and the cross at the letter "R" represents the location of the "Rickmers." What do you say as to the approximate correctness of those locations, and to what extent would you differ?

Mr. ASHTON.—We object as incompetent.

A. Well, it is nearly correct. I did not take any bearings, I simply gauged my distances from the ships; but I would say it is nearly correct. If anything he was out a little bit more so as to clear the "Corona."

Q. That is, if anything, your idea would be that the "Corona" would be a little nearer inshore relatively?

A. Yes, sir.

Q. And he a little bit more out?

A. Yes, sir.

Q. And the distance between them at the time they took their second anchorage was about what, between those ships?

A. Well, what you call a good safe anchorage; between a quarter and a half a mile, so as to give him plenty of room to drift and swing.

Q. Now, when you hauled them up the second time, before picking him up did you tell him anything about taking up his anchor?

A. No, sir. We had the men at the windlass and began to heave. He hove in some chain.

Q. You didn't know how much chain?

A. I did not.

(Testimony of H. H. Morrison.)

Q. Did he give you any information as to any damage done to his right chock, or his compressor, or his windlass at that time? A. No, sir.

Q. You saw the men at work taking in the chain?

A. Yes, sir.

Q. About how long were you beside him while they were at work before you commenced towing him?

A. We started to tow at once, as soon as we got the man at the wheel we went ahead and hauled him up.

Q. About how long was it—?

A. (Interrupting.) We were probably towing him half an hour.

Q. (Continuing.) Before you started?

A. I have forgotten now. Ten or fifteen minutes alongside, yes, probably fifteen minutes coiling that hawser and putting it out again.

Q. Now, how long were you towing forward and holding him until he made fast and let go your hawser?

A. I don't know; I never looked at the time. Probably twenty minutes or half an hour.

Q. What, if anything, was said by either of you before letting go the last time?

A. When we got him in the right place, the mate said to hold on and he slacked his port anchor, and wanted me to tow her bow while he let go the starboard anchor which I did.

Q. He slacked on the port anchor?

A. He slacked out chain; yes, sir.

(Testimony of H. H. Morrison.)

Q. And told you to hold him?

A. Told me to swing her bow out so as he could sweat her and let go the starboard anchor.

Q. Which way did you swing her bow?

A. Up to the northwest and west.

Q. And he let go his starboard anchor? Did you instruct him to let go?

A. No, sir, he gave his own orders.

Q. Did either the mate or the captain say anything to you in regard to their berth, or whether they had sufficient clearance from the other ships?

A. Yes, sir.

Mr. ASHTON.—We object; immaterial. Also as incompetent and irrelevant.

Q. What, if you know, did they say?

A. After the hawser was cast off and I got my hawser in, I went alongside the ship and had a talk with the captain.

Q. You mean after you got your hawser in after the second anchorage?

A. Yes, after we got him anchored the second time, I went alongside, and I says, "Are you all right Captain?" and he says, "Yes, I am in a good berth," and I told him that when I went in I would send a tug out the next morning to take him up the Sound, and he said he was well pleased with the berth.

Q. Did either of them ask for any information as to

(Testimony of H. H. Morrison.)

the amount of chain which should be paid out, or did you give them any? A. No, sir.

Mr. ASHTON.—We object as leading.

Q. Do you know what amount of chain was paid out after they hoisted it? A. No, sir.

Q. Was you able to see whether they hove in their port anchor so they could see it, or took it in so it was off the ground?

A. It was quite dark at the time, and I could not say.

Q. If as a matter of fact they did not heave in more than the scope of chain they had out—had run out before the breaking of the compressor or the right chock, and did not lift their anchor off the ground, I ask you if you knew of that fact at the time, or at all until now?

Mr. ASHTON.—We object to the question as argumentative and leading.

Q. Only the simple fact whether you had knowledge of it at the time? A. I had no knowledge of it.

Q. What did you do after that?

A. I came to Seattle and reported the matter to the manager.

Q. And then what?

A. Well, he said he would give them a stronger tug; and when the wind let up they would attend to it; and I left and went to Port Townsend for another ship.

Q. What kind of a ship was the "Rickmers"?

A. She was an iron and steel four-masted ship, a little

(Testimony of H. H. Morrison.)

over two thousand tons; some calls them a four-masted bark.

Q. She was in ballast, was she?

A. Yes, sir; she was in ballast.

Q. On your way to Port Townsend, did you see her?

A. No, sir, I saw the lights as I passed is all.

Q. The next day did you see her again?

A. Yes, sir; a telephone report along towards morning. At that time the wind was strong nor'west at Port Townsend. They reported a four-masted ship sending up rockets in distress; and the nearest description I could get it was between Seattle and Muckilteo; between Smith's Cove and Muckilteo, was the nearest I could get of any description; and the wind was west off, and then I went and telephoned our agent to send something up and see what it was, and they went up and discovered the "Rickmers" and the "Stimson" ashore near Richmond Beach; and we went there and the tide was in, and we towed him up and got him back to Salmon Bay.

Q. Did you have any conversation with the master or the mate or any officers afterwards?

A. Oh, yes, sir; I was aboard the ship at the time I I was alongside of the ship.

Q. What conversation did you have?

A. We had quite a conversation about different things. He told me about getting away and parting their chain.

Mr. ASHTON.—We object to any conversation hap-

(Testimony of H. H. Morrison.)

pened at that time being introduced on defendant's side such case at this time.

Mr. HUGHES.—You are overlooking the fact that I simply offer it as explanatory of their conversation with these men, our statement of it, so that you may understand, which makes this necessary. They testified as to the conversation with Captain Morrison, and that is the only reason I am offering this, that I am asking these questions. I do not consider it of any special importance to me, but I thought it might be best not to overlook the fact in my testimony.

Mr. ASHTON.—Of course, at this late day after the captain and officers of the "Rickmers" have gone probably to the other side of the earth; no one knows where they are.

Mr. HUGHES.—If you will read their testimony, then you will see that they testified to it.

Mr. ASHTON.—And there is no opportunity to show anything different from what Captain Morrison may say about it, in case we wish to.

Mr. HUGHES.—My purpose is simply to show what they said because they gave the testimony.

Q. Well, at that time, go on and state what, if anything was said about the events of the night before? And about what you saw?

A. Well, I saw everything in confusion aboard the ship. She had struck the schooner about full and mashed

(Testimony of H. H. Morrison.)

in her port bow and starboard quarter, that is the bulwarks; and I asked the mate how it happened, and he explained that the windlass was defective, and when she fetched up with a run, she carried away, and she only had the starboard anchor left, and she went away. He said that the windlass was defective whenever they left the port she came from, Shanghai, or whatever it was.

Q. Did you see the damage which was done to her riding chock?

A. Everything was in a mess; there was old iron and mashed up wood, and they had broken tackles and everything on deck broken tackles and broken lines; there was a mass of confusion on deck.

Cross-examination.

(By Mr. ASHTON.)

Q. The wind must have been blowing pretty hard when you took her in there? A. Yes, sir.

Q. What velocity do you think it had?

A I could not judge; it was a little too strong for us to tow the ship.

Q. The "Tacoma" is a pretty powerful tug, isn't she?

A. She is a good average tug, yes, sir.

Q. How was the wind when you reported to the manager what you had done? A. Southeast.

Q. Well, I mean how did it compare in velocity?

A. I should judge about the same as when I anchored her.

(Testimony of H. H. Morrison.)

Q. Had you any appliances or means aboard the "Tacoma" for recording the velocity of the wind?

A. No, sir.

Q. What kind of weather did you have that night in the way of velocity of the wind in going from Seattle to Port Townsend?

A. Well, we had it southeast as far as No Point.

Q. And how was the wind?

A. About the same as when we anchored; it may have been possibly at times stronger.

Q. Was it blowing in gusts, or was it a steady blow?

A. It was squally at times, but nothing bad; a good strong wind, pretty near coming from the southwest.

Q. Did she shift at all?

A. It shifted after we got to Port Townsend. I don't know what it done here.

Q. Did she shift temporarily, or did these gusts seem to be from the same quarter? A. They were.

Q. What did you go back to Port Townsend for?

A. To tow the ship "Trimtram" from Port Townsend to Everett.

Q. Where was the "Tyee"?

A. In Seattle Bay, waiting for the wind to moderate.

Q. Had the tug in Seattle?

A. When I left.

Q. Waiting for the wind to go down?

A. Yes, sir.

Q. Was the wind so severe that the "Tyee" could not stand to leave the Seattle Dock?

(Testimony of H. H. Morrison.)

A. She could stand it, but we couldn't tow anything; and the ship was in better condition than if she was under way, and especially in getting under way in the night. The "Trimtram" was a much smaller ship, and the "Tyee" was a much stronger tug than the "Tacoma," so they made the change.

Q. How much did the wind decrease in your judgment from the time you took the "Rickmers" into Shilshoal Bay say down to the time that you reported to the manager at Seattle?

A. I don't think it decreased a particle.

Q. What time was it when you reported to the manager, what time of night?

A. I presume about six or seven o'clock, or such a matter, as near as I can tell.

Q. How much did the wind decrease from six o'clock, down to the time you arrived in Port Townsend?

A. When we arrived in Port Townsend, it was blowing hard; it always blows hard in Port Townsend; that is what has been my experience.

Q. Do I understand you to say that the wind had increased?

A. As we got towards the Straits, it did. I don't know what it done here; and then it suddenly hauled to the westward.

Q. What time did you arrive in Port Townsend that night? A. Between eleven and twelve o'clock.

(Testimony of H. H. Morrison.)

Q. Did you tow the other ship that you mentioned that night?

A. No, sir; he had no steam to get his chain up, and the captain did not want to get under way, said he didn't want to go until morning.

Q. Well, the condition of the weather I suppose had something to do with the captain's decision, and probably your own, Captain, as to taking her to Everett that night.

A. I thought myself she was safer at anchor than under way.

Q. It was better tugging over the next day?

A. It was better, yes, sir.

Q. Do you know whether or not the windlass of the "Rickmers" was used in letting go the port anchor when you first took her in there?

A. The windlass had to be used.

Q. You could hear it. Couldn't you hear the windlass winding in?

A. I could hear the chain go out. I had no way of seeing the windlass, or knowing what they were doing. They may have been paying it out from the deck.

Q. Wouldn't they have had to use the windlass to pay it out?

A. Oh, no; not necessarily; they could arrange the chain on deck.

Q. It would be pretty dangerous proceedings to let go of an anchor without using a windlass?

(Testimony of H. H. Morrison.)

A. Oh, you might have an old-fashioned windlass, one you always had to let go with a run.

Q. What did they use to pull in the part of the port anchor cable which was partly in?

A. Had a capstan and windlass, and they used a hand-bar. I could see the men heaving on the capstan.

Q. Did you see them using the capstan?

A. I saw them walking around the forecastle head.

Q. Did you see them with the hand-bar? Did you see them with hand-bars on the capstan walking around it? A. I did.

Q. Will you testify positively that they did not use the windlass in hauling that cable?

A. No, I don't know what they used. I could see them walking around and saw the chain coming in.

Q. But you don't know whether the windlass was in use or not in hauling in the cable?

A. No. The supposition is that it was.

Q. You knew, didn't you, when you left Townsend, that the "Rickmers" had never been in here before and was a stranger to these waters?

A. No, sir, I did not.

Q. Who engaged you to tow the ship?

A. The captain of the ship—I took him to be the captain. I was talking to someone on the bark.

Q. Do you remember what he paid you?

A. He said he would give us seven hundred and twenty dollars to tow him to "Tacoma" and back to sea.

(Testimony of H. H. Morrison.)

Q. To do what?

A. To take him from where he was between Angeles and Dungeness to Tacoma and back to sea twenty miles off shore.

Q. Was it in writing?

A. No, sir; it was too rough to go alongside the ship.

Q. Now, Captain, you would not undertake at this late date to give the exact distance that the "Rickmers" was from the "Corona" when you first left her?

A. Not the exact distance, no; not to a foot or a fathom.

Q. And you would not undertake to fix the distance the "Corona" and the "Mildred" were apart?

A. No; no more than that they were a good safe distance apart.

Q. You simply speak from your recollection of your observation at the time? A. Yes, sir.

Q. Were you pretty busy with your tug that night? Did you have much work, have many orders on hand?

A. I don't know of many orders. I only had one order, was to go and take that ship out.

Q. From Port Townsend to Everett?

A. Port Townsend to Everett, and then come to Seattle.

Q. When did you get that order? Before or after you took the "Rickmers" in tow?

A. After, when I turned in, they turned or changed

(Testimony of H. H. Morrison.)

the tugs, and told me that they would have the "Tyee" take the "Rickmers" and me go and take the "Trimtram."

Q. That was a pretty bad night all around for a ship on the Sound?

A. Oh, I don't know. I have seen lots just as bad.

Q. Isn't that the night that the "Sir Robert Forney" went ashore in Tacoma harbor?

A. I don't know.

Q. What was the name of the mate that you talked to who told you that the windlass was defective when they left Shanghai? A. I don't know.

Q. How many mates were on the ship, if you know?

A. Only one I was talking to that I was sure of being a mate.

Q. Who was he, the first or second mate?

A. The first mate.

Q. How did you know that to be so?

A. He was performing the duties of mate. He took charge, and done all the work. I took him to be the mate. I didn't ask him for his office or position.

Q. He might have been the second mate?

A. Not that day. All hands were on deck.

Q. And you don't know how many mates were on that ship?

A. I didn't ask them; I presume there were three.

Q. And you don't know whether he was the second or third mate except from what you saw him doing?

A. He had charge of the deck and was doing the duties of a first mate.

(Testimony of H. H. Morrison.)

Q. And was this your only reason for believing he was first mate?

A. I asked him if he was mate and he said he was.

Q. What reason did you have for asking him if he was mate? He was talking to you? Why did you want to know his authority?

A. Because we generally go aboard and have a talk with the Captain and mate; we don't generally want to talk to the cook. We want to know who we are talking to.

Q. Did you have any particular business with the mate at this time to talk about?

A. Nothing any more than we often go aboard and ask how things are, and how long before they will have the chain in, or something of that kind.

Q. Now, as a master mariner, and with your experience as a captain, if you went aboard a ship to find out her condition, you would naturally talk to the captain, wouldn't you?

A. I had a talk with the captain at the same time.

Q. And the mate came right up and put in voluntarily this information about the windlass?

A. No, sir, he didn't. I wormed it out of him after I got aboard ship.

Q. You tried to worm something out of the mate and captain?

A. No more than I found out about different things.

(Testimony of H. H. Morrison.)

Q. Why were you interested about it? Why were you concerned in trying to worm something out of them?

A. We were to try to get the ship to Tacoma as soon as we could and with as little rumpus as possible, and we had two on board, and the fellow who is alongside ship generally looks after them, and I happened to be that fellow.

Q. You really had charge of the whole business of getting that tug to Tacoma?

A. No, sir, I was helping them out all I could. The "Tyee" had charge.

Q. Now, Captain, you say that the ship dragged three-sixteenths of a mile when she first dragged after you had anchored her. Now, how do you arrive at that distance. Anything more than optical observation?

A. Just observation and practice. I supposed he was in a safe berth.

Q. Observation with your eye, of course.

A. Yes, sir.

Q. How far was she from the north shore of West Point spit there when you first anchored her?

A. She was in twelve fathoms of water as we had. I don't know the ship's distance. We were in twelve.

Q. And she was in twelve?

A. We were in twelve; and it may have been deeper where she was; she was hagging out.

Q. She was out to the length of your hawser to the northward?

(Testimony of H. H. Morrison.)

A. Trailing along the beach, yes, sir.

Q. Were there any other tugs in Shilshoal Bay that evening that you saw?

A. I don't remember of any other tugs being in there.

Q. Did you see any other vessels other than the "Corona," the "Mildred" and the "Stimson"?

A. Nothing I took any notice of.

Q. Were there any other tugs there belonging to the company you were connected with at Seattle that night other than the "Tyee"? A. Not that I know of.

Q. How far was it, from the "Corona," in your judgment to the shore, that is, to the shore of Shilshoal Bay in a due easterly direction? (Witness examines map marked Respondent's Exhibit 12.) Well, say from the ship to the shore?

A. I would say that in a due easterly direction passing through and in an easterly direction bring it about there (indicating).

Q. About how far would that be?

A. I don't know without a divider, I wouldn't want to guess at it. If that is in a direct easterly course, it would bring it about here, it would be three-sixteenths of a mile provided that diagram is correct.

Q. Anything more than that?

A. That is, in to the shore I would say that is about the cofrect length of the line.

Q. That would be only half a mile off?

A. Yes, sir, according to that, that is correct.

(Testimony of witness closed.)

B. B. WHITNEY, a witness for and on behalf of libelant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. HUGHES).

Q. Captain Whitney, what official position do you hold at the present time?

A. Inspector of hulls.

Q. Are you a master mariner?

A. Yes, sir; I have been.

Q. How long have you been a master mariner?

A. I don't know just when I did first go as master. About ten years, I think, before I went into this position.

Mr. ASHTON.—I want to ask Captain Morrison one more question.

Mr. HUGHES.—Certainly.

Mr. ASHTON.—Captain Morrison, when did you first hear that you would be wanted as a witness in this case?

Mr. MORRISON.—I think about two weeks ago.

Mr. ASHTON.—Is that the first time that you knew that this matter was coming up in court?

Mr. MORRISON.—Yes, sir.

Mr. ASHTON.—That is all. Thank you.

(Direct examination of Captain Whitney resumed.)

(Testimony of B. B. Whitney.)

Q. Now, Captain Whitney, what experience had you had in the handling and anchoring of sailing vessels? Just briefly.

Mr. ASHTON.—I will admit, in order to save the time, that Captain Whitney is a competent and experienced master mariner.

Q. Captain, are you acquainted with Shilshoal Bay, and the character of that bay as a harbor?

A. Why, yes, I think I am. I have laid there for shelter for a good many times.

Q. What do you think of its general character for a harbor in southerly winds and storms?

A. I consider it a pretty good harbor. I have laid there for shelter with logs and they have to be taken care of pretty well.

Q. I wish you would examine this diagram which is marked Claimant's Exhibit No. 12. Now, as appears upon this diagram, on the night of December 25th, 1901, the afternoon and evening of December 25th, 1901, the following vessels were at anchor in Shilshoal Bay, the "Stimson" approximately at the point or cross at the letter "S," the "Corona" approximately at the point indicated by the cross at the letter "C," the "Mildred" at the point indicated by the cross at the letter "M," and the "Rickmers" at the point indicated by the cross at the letter "R." The distance according to this chart of the respective locations would be between the "Rick-

(Testimony of B. B. Whitney.)

mers" and the "Corona" about three-sixteenths of a mile, and between the "Rickmers" and the "Mildred" about three-sixteenths of a mile, with southerly wind blowing at from fifteen to thirty miles an hour or upwards. Would you say that is a suitable and proper berth for the "Rickmers"?

Mr. ASHTON.—We object to this, as irrelevant, and also incompetent; as this is not a case with or against the Puget Sound Tugboat Company.

Mr. HUGHES.—I am offering this in answer to your testimony and not otherwise.

A. Why, eleven hundred feet ought to be berth enough for a ship. How long was this "Rickmers"?

Q. Two hundred and sixty-seven feet?

A. How much cable did she have, all told?

Mr. ASHTON.—All told, one hundred and thirty-five fathoms.

A. Yes, sir; eleven hundred feet is far enough.

Q. Captain Whitney, assuming that the "Rickmers" when first brought to anchor put out her port anchor with forty to forty-five fathoms of chain, that when she fetched up on her chain, she split her riding chock, or what has been spoken of in the testimony as her compressor, which held when made fast held the chain, and that from ten to fifteen fathoms of her chain ran out, and then she dragged from a point approximately represented by the cross at the letter "R" to the "Corona," and that the tug which anchored her then overhauled

(Testimony of B. B. Whitney.)

her and made fast and towed her back to that anchorage; what should the "Rickmers" have done with her port anchor before being towed back?

Mr. ASHTON.—We object to that as being incompetent, irrelevant and immaterial.

A. I don't hardly understand what went wrong with the windlass; you say the riding chock or the compressor; mariner's term as the compressor is the band which clamps the wildcat through which the chain runs, and the right chock is another chock out close to the hawse pipe which is a sort of a clapper arrangement or weight which comes down and pinches the chain.

Q. This device was an appliance to fasten upon one of the links of the chain, and hold the chain so as to take the entire strain and is represented by the drawing shown upon exhibit No. 5?

A. That drawing indicates a chock that is placed closed up to the hawse pipe to take the weight of the chain, or a part of the weight of the chain; but the marine usage is that the compressor is always a band which runs around the wildcat that the wildcat travels on the ship windlass the chain drop into slots arranged for them, and the compressor is a lever upon the top of the forecastle head which takes that band and stops the wildcat from traveling until it can be locked to the windlass.

Q. In this case, if the anchor dragged after this accident to the right hand chock or whatever device it

(Testimony of B. B. Whitney.)

was which held the chain so that the ship traveled a distance of approximately three-sixteenths of a mile down to the "Corona" before she was hauled back and came again to anchor, would you say it was good seamanship for the "Ricknners" not to raise her anchor and inspect it, or raise it far enough to see that the chain was not fouled with it, or that there was nothing the matter with it?

A. I would have sighted it myself if it had been a case where I had anything to do with it; I would have sighted the anchor.

Q. Would it be good seamanship not to take up any more of the chain than ten or fifteen fathoms that had run out; in other words, to leave out forty fathoms of chain while she was being hauled back over a depth of water not over twelve to sixteen fathoms.

Mr. ASHTON.—We object to that as leading.

Q. So that her anchor was dragging while she was being taken back by the tug?

A. Well, they may not have been able to have gotten the anchor while she was being towed back if they had a hand windlass that worked slow; but after she had been anchored I think they should have sighted their other anchor to see if it was clear or had it in the ship to let go when they wanted it, if they should want it.

Q. Now, in coming back to anchor again, after they had towed or dragged that forty or forty-five fathoms of chain, would it have been good seamanship to put

(Testimony of B. B. Whitney.)

out the starboard anchor with thirty fathoms of chain without hoisting the port anchor under the circumstances I have described and sighting it to see it was not foul, and in proper position for which the ship could ride? A. I hardly think so.

Q. Let me ask you: If they had not hoisted the anchor, and if they had not taken in more than the ten or fifteen fathoms of chain after it ran out so that at all times there remained out the original forty fathoms of chain with which the ship had dragged while coming back that distance of three-sixteenths of a mile to the second berth, and had payed out the starboard anchor, how would the ship be moored with reference to the port anchor; what would be the position of the port anchor?

A. What do you mean? When she first anchored, or afterwards?

Q. When she anchored the second time?

A. When she was finally anchored the second time?

Q. When she was finally anchored the second time, yes?

A. Well, with thirty fathoms of chain on the second or the starboard anchor?

Q. Yes, sir; with thirty fathoms of chain on the second or the starboard anchor?

A. The chain on the port anchor would have tended aft a little, because in fourteen fathoms of water she would sag back with thirty fathoms of chain, she would

(Testimony of B. B. Whitney.)

go back some but not far enough to reach the first anchor which she had left to drag—it must have tended aft a little; the tend of the chain must have been aft.

Q. Towards the stern of the ship somewhat?

A. Yes, sir; aft.

Q. I will ask you if she was left that way, on which anchor would the ship ride?

A. She would ride on the starboard anchor unless there was a shift of the wind in the opposite direction, or very nearly the opposite direction.

Q. Under those circumstances, with the wind blowing at say from fifteen to twenty-three, twenty-four or twenty-five miles a nhour, would you say that thirty fathoms of chain on the starboard anchor and a depth of thirteen or fourteen fathoms of water would be sufficient?

A. Well, that would depend altogether on the weights of the anchors.

Q. With an anchor of thirty-eight hundred weight and stock of seven or eight hundred weight?

A. How many tons was this ship?

Q. Two thousand one hundred and seventy-four tons, I think, net register, in ballast?

A. Are you sure you have the weight of the anchor right? You have given me a very light weight for the anchor, and I doubt if you are right in that.

Q. I will look to be positive.

(Testimony of B. B. Whitney.)

Mr. ASHTON.—Five thousand one hundred and forty-four.

A. It must be heavier than that, than thirty-eight hundred because that is altogether too light for a ship of that size. That would be all right for one of these coasting brigantines.

Mr. ASHTON.—The starboard anchor and stock is 5124.

Q. I show you, Captain, Claimant's Exhibit No. 4, that being the survey in respect to these anchors, and ask you to state from that survey what is the weight of the anchor and stock, as shown upon that exhibit?

A. Thirty-eight hundred weight for the anchor, exclusive of the stock, and the weight of the iron stock is seven hundred weight and three-quarters, I think; there is no space there, but I presume that is what it is.

Q. The three is under the quarter?

A. That is forty-five hundred and three-quarters; forty-five hundred weight and three-quarters. But that is English hundred weights, which are one hundred and twelve and one-half pounds to the hundred weight, that would add about eight per cent, I think.

Q. It adds twelve and a half pounds per hundred weight? A. Yes, sir.

Mr. ASHTON.—That would make 5124.

Q. I am talking about the English hundred weights?

A. I don't know. Of course, I couldn't tell you off-

(Testimony of B. B. Whitney.)

hand what Lloyd's requirements are, but that seems to me a pretty light anchor for a ship of that size, and on some ships the ground tackle is a great deal heavier than is required, and it all depends; if a ship has heavy ground tackle, they don't have so much chain as ships who are up to the requirements or a little under.

Q. Would you say under the circumstances I have described, in view of the weather as described and the situation as shown upon this Exhibit No. 12, would you say that was sufficient scope of chain to pay out under the circumstances stated?

A. No. If they dragged that forty-five fathoms of chain on one anchor, when he anchored the second time he would give more range of chain of course.

Q. Now, as the wind increased, what would good seamanship require?

A. Well, all you can do is to give more chain; that is all you have to hold with. But, now, don't misunderstand me. I wouldn't have given more chain without knowing whether that anchor—I would have sighted that anchor, and had it cat-headed, and then I would have given more chain, probably fifteen or twenty or twenty-five fathoms more on the start.

Q. And if you had paid out after sighting, taking up and sighting your port anchor, would you pay it out again? What would you say, would you pay it out?

A. I would let the second anchor go before I paid out too much chain—I mean the first original anchor,

(Testimony of B. B. Whitney.)

or the anchor I would have sighted I would let go before I paid out too much chain on the starboard anchor, probably would let go about forty-five or fifty-five or sixty, not to exceed sixty fathoms on the starboard anchor before I would let the port anchor go again.

Q. And then how much would you pay out further on both of these anchors?

A. I would pay out; I would keep paying out in equal amounts and keep the strain as even as I could on the anchors until I got the biggest end on the starboard hand.

Q. And the amount of chain would depend upon—that you would pay out would depend upon how the wind increased?

A. Certainly, yes; or in my judgment how much it needed to hold the breeze.

Q. What would be the duty of a shipmaster under the circumstances I have stated, with night coming on, and an increasing southerly storm, southerly winds, in respect to taking soundings and making observations to see whether he need to pay out more chain, or whether his tackle was holding?

A. It is customary, no matter whether you are holding or dragging, if there is more than an ordinary breeze blowing, it is customary to get the deep sea lead, and drop it to the bottom, and give a little slack line to it, and try occasionally to see if that line is plumb or not. If the line tends forward, we know that the ship is

(Testimony of B. B. Whitney.)

dragging; can't be anything else. That is done always as a matter of precaution.

Q. Now, Captain, assuming that after being anchored the second time, between ten and eleven o'clock that night, the wind increasing, and in the meantime the port chain having been secured by a tackle made fast by a hook at one end of the tackle, and a half, or an inch and three-quarters hook, being fastened into a strap about the cable, and the hook at the other end of the tackle into a chain about the foremast, that the hook straightened out, and that tackle gave way, and the ship began to drag; and it was subsequently discovered that the port anchor was gone, when, in your opinion, would that port anchor chain have broken?

Mr. ASHTON.—We object to that as being too problematical.

Q. Would it in your opinion have been injured at the time of the breaking of the compressor and the first dragging, or could it have been broken by the strain which stretched out the hook?

A. How big was the hook?

Q. An inch and a half or an inch and three-quarters?

Mr. ASHTON.—Same objection.

A. Well, I presume that the equipment, the cable would be—well, how thick was the cable?

Q. Two and a quarter inches?

(Testimony of B. B. Whitney.)

A. Oh, no, a hook of that size couldn't possibly part the cable.

Q. At that time the "Rickmers" swung so that she drifted down upon the "Mildred," located approximately as appears on this Exhibit No. 12, and took off her jib-boom, the wind being southerly. How, in view of the situation of the tackle as above described could that be accounted for in your opinion?

A. The wind southeast?

Q. Southerly, or south; the wind south.

A. Well, if the wind didn't vary any from south.

Q. In view of the situation of the land there, the wind varying?

A. Of course, I know myself from personal observation, I know that the wind, the south wind is pretty steady there, because there is quite a high bank, a high hill around; and sometimes it will draw around the point here and blow pretty strong around the point, and other times it will draw around the hill the other way; and the only way that she could get into this vessel here would be the squalls coming variable to some extent, heavy squalls out from this hill here would drag her that way at first before she dragged the other way.

Q. If her port anchor was trending aft or toward the stern of the ship, the strain would not come on it until the starboard anchor first dragged sufficient to bring the ship back to where it would take the strain on the port anchor? A. Certainly not.

(Testimony of B. B. Whitney.)

Q. And now, then, the strain then coming on the port anchor, and the chain parting, would the ship then the ship would swing back, wouldn't she, to her starboard anchor?

A. She would have to ride her starboard anchor, of course, altogether.

Q. The parting of the chain, after the chain had been taking the strain for the first time on the port anchor, the parting of that chain would cause her to swing back again, but that would swing her to the west under those circumstances, would it not?

A. If when the starboard anchor was thrown out it was looking to the west, she would have tailed that anchor.

Q. Assume that after striking the "Mildred," she then clears and drifts for approximately a half hour, the wind veering to the southwest, and bears down upon the "Stimson" and strikes it, what in your opinion, if the wind was say in the neighborhood of thirty miles an hour at that time, twenty-five or thirty or upwards, could the "Stimson" have done to prevent the collision occurring, say between eleven and twelve o'clock midnight, in such a storm?

A. I don't know that she could have done anything.

Q. Why not?

A. The only thing she could do would be to slip her chains and go ashore herself; that is all; slip her chains. That is the only thing I could see she could do.

(Testimony of B. B. Whitney.)

Q. Could she do anything in the way of hoisting sail which would be safe under those circumstances, or likely to be effective as a means of avoiding the collision?

A. Oh, I don't think so. She is too big a vessel to try dodging with sails on her. How big is the "Stimson"? She must be seven or eight hundred tons. I think she has been inspected. I am quite sure she has been inspected, and she must be over seven hundred tons.

Q. Yes, sir; and one hundred and eighty-two feet in length?

A. That trick can be done with small vessels, little small schooners, especially riding as a manila or hemp hawser, they can set sail and dodge to one side if they saw a vessel coming down on them fast, so when they shored to one side the vessel might pass on the other in time to leave their next turn the other way, and have come back.

Q. The "Rickmers" was dragging her starboard anchor and consumed in the neighborhood of half an hour in traveling that distance which was approximately half a mile?

Mr. ASHTON.—No, not as much as that, is it?

A. It is about five-sixteenths of a mile, isn't it?

Q. Well, it is approximately a half a mile. Would that ship under the circumstances I have described including the circumstances of wind and weather, move

(Testimony of B. B. Whitney.)

toward her in a uniform direction, so a lookout on the part of the ship or the officers or crew of the "Stimson" could determine until she was near at hand whether she was likely to collide or not and would her movement be variable?

Mr. ASHTON.—We object to that as leading and suggestive

A. That would of course depend a great deal if the wind is variable, and it is daylight and you can see the vessel coming you could calculate pretty close where she is coming to you and travel past; but I don't think a person could determine in the night. In the first place you couldn't know she was dragging until she got pretty close to you; and dodging with sails a vessel of that class is too large to practice that. It is only successfully done occasionally with small vessels.

Cross-examination.

(By Mr. ASHTON.)

Q. Captain Whitney, suppose you were the master of a ship like the "Stimson," you have some recollection of her, and she was anchored at the place shown on this Exhibit No. 12, and that you had a lookout on duty, it was night-time, but your lights were burning, your anchor lights were burning, and the anchor lights of the "Rickmers" were burning, and that you heard the crash of the "Rickmers" going into another ship ahead of you, about half a mile distant, and that you could

(Testimony of B. B. Whitney.)

then see that the vessels so crashing together had gotten apart and that one of them as you could see by her lights was progressing toward you, that you had out one hundred and five fathoms of chain and swinging to one anchor, would you as a master mariner simply stay there and take your medicine and let the ship come down on you and strike you, or would you do something, and if so, what?

Mr. HUGHES.—We object to that as assuming a state of facts not in accordance to and contrary to the evidence.

A. Well, if I had any more chain I would give it to her; and of course, I would delay the accident as long as possible; on a vessel the size of the "Stimson" I think I would set head sails and swing her; but it is as liable to catch her back of the wrong side as on the right side.

Q. Just answer my question. I want to know if you would do anything that a man would usually do, and if so, what?

A. I don't know what else I could do than to give her more chain, if she had it; but probably she didn't have it.

Q. Then you think as a master mariner you could have done nothing except to give her some sail if possible to do so, in such a gale of wind, or to pay out more chain?

A. I would give her more chain, but as far as setting sail is concerned, that is a matter which takes time.

(Testimony of B. B. Whitney.)

Q. Don't you know as a master mariner that any ship riding at a hundred and five fathoms of cable and but one cable out that that ship can be veered or moved with her helm without any sail?

A. Well, if she can, Mr. Ashton, it is a new one on me.

Q. What would you say, if there was a good strong tide running?

A. She could be veered a little, but not so very much. Yes, with one hundred and five fathoms of cable she could be veered quite a little bit if the tide was running strong.

Q. So you would try and veer her?

A. I would delay the accident as long as possible, if I could, of course.

Q. Assuming that the wind was so violent that you would not be able to do anything with the sails, would you have simply waited and taken your medicine as I stated, or would you have made any attempt with your helm?

A. That is absolutely useless. Your helm is always lashed, and it would be useless, unless there was a good strong current you could not veer your vessel a particle with the helm; you couldn't veer it a particle with the helm.

Q. You say, then, that if the helm on this night in question had been hard to starboard it wouldn't have affected the "Stimson" at all?

(Testimony of B. B. Whitney.)

A. Not in the slightest, unless there had been some current passing past the vessel, which relatively makes her passing through the water; that is the only way a vessel will steer.

Q. That is, by a tide or otherwise?

A. Yes, sir. Of course, when the current is passing rapidly past a vessel, she relatively is passing through the water but she can't steer without that headway.

Q. What kind of bottom is there in Shilshoal Bay north of West Point?

A. There is a variable bottom there. It is gravelly in places, and places there is clay, spots there which are clay.

Q. Any sand?

A. There is some sand, but it is principally gravel and clay. I will qualify that statement a little though by saying that I never anchor quite so far north as that. I anchor probably a quarter of a mile nearer West Point than where these marks are. I have anchored vessels on these places, but I have never taken the soundings. My laying for shelter there was when I was towing logs, and I have found that the bottom varies from gravel to clay.

Q. And you generally lie closer to the Point?

A. I generally try to find clay.

Q. That is because clay is better?

A. Yes, sir; the logs hold pretty hard in a gale of wind.

(Testimony of B. B. Whitney.)

Q. And clay is a better holding ground as compared with sand or gravel?

A. Yes, sir; if I didn't find clay, I used to work the wheel all night long. If I found clay it was different. It was holding if the anchor was in the ground.

Q. If you were coming to anchor out in what is Shilshoal Bay, and what is nearly an open roadstead, so the wind can get a quarter at you from any quarter, and we will say the wind is blowing from the southwest, and you are going to put out two anchors, would you put them both out to windward? A. Sure.

Q. You would hold both to windward?

A. Sure.

Q. You would not fork your anchors at all?

A. I would spread them a little so that if they did start to drag they would not foul each other; just spread them enough to clear each other. If I wanted to moor a ship ahead and astern, the proposition is different then, of course.

Q. Well, suppose you wanted to moor a ship in the safest possible way, with the wind blowing at storm velocity, or increasing, and the wind variable, shifting at times, and blowing in gusts, how would you place your anchors if you were going to use two of them?

A. I would place the anchors so they would be to windward. Of course, an anchor to windward is what the old sailor always wants.

Q. Well, would you put them both in the same place?

(Testimony of B. B. Whitney.)

A. I would spread them just enough so they would not foul.

Q. You would not do that with the wind blowing in gusts?

A. I would get the mean of the gusts as near as I could, get the direction of the wind, and spread my anchors accordingly.

Q. Now, Captain, how much cable is allowed; what is the rule which is followed amongst master mariners as to the length of cable you would pay out in proportion to the depth of water?

A. In ordinary weather, two and one-half times the depth of water is usually considered a right range of cable, in ordinary weather.

Q. I want the rule of the United States Navy as to paying out.

A. I don't know what the navy rule is; I can't tell you offhand whether that rule I have given is any association rule or not, but that is the rule which goes among sailors. Of course, now, that all depends upon the weather. If it is really calm, we sometimes anchor if we are not going to stay awhile, we drag the anchor on the bottom, if it is calm. But if we are going to stay any time, and any wind blowing, say a fresh breeze, we put out two and a half to one.

Q. What would you put out in a gentle breeze?

A. What some people call a gentle breeze is different.

(Testimony of B. B. Whitney.)

Q. What would you put out when blowing from sixteen to twenty on the Beaufort scale?

A. Twenty miles an hour is a fresh breeze.

Q. On the Beaufort scale?

A. I can't tell you offhand, but twenty miles an hour is a fresh breeze, thirty miles an hour is a gale, and forty miles an hour is a heavy gale or is a high gale. But among sailors, in the general acceptance of the term, twenty miles an hour is a fresh breeze. About two and a half to one—if I was coming to anchor myself, I would use about two and a half to one.

Q. In any more than a fresh breeze?

A. Well, I would use it in a strong breeze; that is any more than a fresh breeze.

Q. Would you do that when in lee of the shore?

A. Oh, yes. I would not come to anchor unless I were lee to the shore, unless it was some special occasion.

Q. Don't you know that it is a general rule, Captain, among master mariners that aside from the storm that they generally pay out say two fathoms of cable for every fathom of depth?

A. That is not for strong winds; that would be all right for a gentle breeze.

Q. I mean for anything less than a storm?

A. Oh, no; that is not enough.

Q. Do you know whether or not that is the rule in the United States Navy? And that is taught at the

(Testimony of B. B. Whitney.)

Navy Academy at Annapolis, that is anything less than a fresh breeze?

A. I don't know anything about that, but I will tell you what my practice always was.

Q. I am just asking you the question, Captain, under this cross-examination. Just answer yes or no.

A. I don't know what their rule is.

Q. Now, in all your testimony regarding what you have done in the way of paying out more chain and everything of this kind, the general questions which were asked you, you were figuring upon everything being clear astern of you, and your having room to do everything you referred to?

A. Yes, sir; I certainly did. A safe berth.

Q. That is all.

Redirect Examination.

(By Mr. HUGHES.)

Q. From the location of these ships shown upon the diagram you would have considered that a safe berth if you had been at liberty to employ the tactics you say you would employ under conditions in which they were stormy weather and increase of wind?

Mr. ASHTON.—We object to that as not proper redirect examination, having been covered in the former testimony.

A. I think that proposition was eleven hundred feet?

Q. Yes, sir.

(Testimony of B. B. Whitney.)

A. Assuming that eleven hundred feet was the distance, it was certainly a safe berth.

Mr. ASHTON.—I move to strike out that answer as based upon an incompetent hypothesis.

Q. Captain, the other ships were heading the same way as yours as long as the wind was blowing toward them?

A. Generally, yes, sir; of course, a ship lying at anchor swings more or less a little to one side or the other; but generally they will tail in the same direction, pretty near the same.

Q. The only danger of ships fouling by reason of the scope of their anchor chains not being sufficient would arise under what circumstances?

A. I don't quite catch the question?

Q. (Question read.)

A. When they anchor too close to each other is all.

Q. Well, could that happen unless the wind was blowing? What I want to get at is could that occur if the scope of the chains did not leave a clear way; could that occur under any circumstances other than at the changing of the tide in calm weather when they swung in opposite directions?

A. Why, no; if they are all tailed in the same direction; they have got to be clear to each other. Of course, in the swing of the tide, one might swing one way and one another, and the lengths of the vessels with a little load on the cables might come together possibly. That

(Testimony of B. B. Whitney.)

would depend entirely on how far they were apart when anchored.

Q. In stormy weather, with an increasing wind rising to a gale, you say you would increase the scope of your chain? A. Yes, sir.

Q. As the wind diminishes, what do you then do in the exercise of good seamanship; haul in your chain or leave it out?

A. It is the usual practice to heave it in. Of course, you don't have to unless you want to. It don't do any harm.

Q. In respect to the rules of the navy, the government of ships are different entirely, both in respect to the character of the ships and with respect to their anchors, and holding appliances from ordinary sailing vessels, aren't they?

A. I don't know what the government rules are for weights of cables or anchors; I don't know anything about their rules; I never studied them.

Recross-examination.

(By Mr. ASHTON.)

Q. Suppose, if you were going to pay out cable, and a vessel was eleven hundred feet astern of you, and in such position that you would be liable to foul her if you dragged, and the wind increasing, you wouldn't figure on that other vessel standing still, would you? You would figure on him doing what you were doing, wouldn't you?

A. I would naturally expect, of course—

(Testimony of B. B. Whitney.)

Q. (Interrupting.) Wouldn't any—

A. (Interrupting.) That he would be paying out—

Q. (Interrupting.) Wouldn't any prudent mariner be paying out chain?

A. I would expect her would be paying out about the time I was paying out. Necessarily, it would depend upon each man's judgment and the strength of the wind and the weight of his holding gear; some vessels are better equipped with weights of anchors than others.

(Testimony of witness closed.)

DAVID GILMORE, a witness on behalf of libelant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. HUGHES.)

Q. Give your full name? A. David Gilmore.

Q. Are you a master mariner? A. Yes, sir.

Q. How long have you been a master mariner?

A. Well, I went to sea in 1854, and took charge of a ship in 1868.

Q. Are you familiar with navigating in Puget Sound and its harbors, and the Pacific Ocean?

A. Yes, sir.

Q. And have been for forty years or thereabouts?

A. I came here in 1866, about thirty-eight years.

Q. I will ask you to examine this chart, Claimant's Exhibit No. 12. On the night of December 25th, or the

(Testimony of David Gilmore.)

afternoon and night of December 25th, 1901, the schooner "Stimson" was at anchor at a point approximately indicated on this chart at the cross at the letter "S," the schooner "Corona" at the cross marked with the letter "C," the "Mildred" at the cross marked with the letter "M." About four o'clock in the afternoon of that day the German ship "Robert Rickmers," in ballast, being a ship having a net register of, I believe, 2,174 tons or thereabouts, in tow of the tug "Tacoma," was brought into Shilshoal Bay. At that time the wind was blowing from fifteen to twenty miles an hour from the southeast in gusts, that is, sometimes the gusts being higher than that. She was brought up and cast her port anchor at approximately the point indicated or located on this chart with a cross and the letter "R." She payed out about forty or forty-five fathoms of chain, made fast her chock or compressor to hold the chain, the appliance used for that purpose being such an appliance as shown in Claimant's Exhibit No. 5, which I now show you. At that time that appliance broke, and ten or fifteen fathoms of chain ran out in addition—

A. After they brought up the ship?

Q. When they brought the ship up and applied this chock, made fast this chock, it parted.

A. And fifteen fathoms more chain ran out.

Q. Yes; and at the same time the ship continued to go and drag her anchor. A. Still dragged?

Q. Yes, it continued when the chain quit running out.

(Testimony of David Gilmore.)

the ship continued to go, dragging her anchor, until she came back to the schooner "Corona."

A. Which side of the "Corona," on the starboard side?

Q. On the starboard side of the "Corona."

A. Did she get as far back as the "Corona"?

Q. Yes, got as far back as the "Corona"; and the "Corona" sheered some by putting up a small fore stay-sail. A. Sheered which way?

Q. To the inshore, so that she passed back as far as the location of the "Corona," when she was picked up by the tug again and towed back approximately to the original location.

A. Where they let go the first anchor?

Q. Yes, sir. Assuming, further, that at that time the "Rickmers" did nothing more than to take in the extra chain which had run out, the ten or fifteen fathoms which had run out on the port anchor, which was the only anchor at that time, and without taking in any more chain allowed herself to be towed back. I will ask you to state whether or not it was good seamanship to go back there without taking her anchor off the ground or hoisting it at any time before again coming to anchor, so she could inspect or weigh her anchor and determine whether it was foul or had been affected by the accident which had occurred.

Mr. ASHTON.—We object to that as incompetent, as-

(Testimony of David Gilmore.)

suming a hypothesis not justified by the evidence, and therefore irrelevant.

A. Well, if I had been in charge of the ship, I would have had the steamer hold on to me until I hoisted up the port anchor, and then pulled me up to the right position, and they let go my second anchor. Because that anchor was evidently not fully fast there, when she dragged back past the ship. The having the steamer tow her and letting go another anchor didn't help that anchor any, the port anchor.

Q. When she was towed back to her original position her port anchor not having been hoisted off the ground at any time, she put out her starboard anchor with thirty fathoms of chain off her starboard bow, her bow being sheered around by the tug to the eastward for the purpose of putting out her starboard anchor. What do you say whether it was good seamanship to anchor in that way under those circumstances with that scope of chain and the wind blowing fifteen or twenty miles an hour?

A. I would not let go the second anchor when the first was hanging until I got it up and the *steamer* put me in proper position to anchor.

Q. Under those circumstances, if the starboard anchor was put out, as stated, which anchor would hold the ship?

A. Well, the starboard anchor would hold it.

(Testimony of David Gilmore.)

Q. Under those circumstances could the strain of the ship ride at all upon the port anchor?

A. No, not until if she dragged away back to where she was before.

Q. Under those circumstances, would you say sufficient chain was payed out?

A. How much was payed out?

Q. Thirty fathoms on the starboard anchor?

A. And how much water?

Q. Thirteen or fourteen fathoms of water?

Mr. ASHTON.—We object to all these questions as assuming conditions not justified from the evidence given by the officers of the "Rickmers."

A. No, there was not sufficient chain payed out. I would have given her more if I had room.

Q. The distance between her location and the "Mildred" and the "Corona" respectively being about eleven hundred feet, what would you say as to whether there was sufficient room to pay out the chain?

Mr. ASHTON.—We object to that as incompetent.

A. Eleven hundred feet from the "Corona" was where the ship's anchor was let go?

Q. Yes, sir.

A. And the ship was two hundred and sixty-seven feet long, there was fifteen fathoms of water, and thirty fathoms of chain, and she would be to the leeward to where the anchor was, and three hundred feet long—

Q. Two hundred and sixty-seven feet long.

(Testimony of David Gilmore.)

A. Call it three hundred, that would be four hundred feet; it would be six hundred feet from the "Corona" and thirty fathoms.

Q. Seven hundred feet from the "Corona."

A. They might have given her thirty fathoms more chain, would have been safe enough. That is what I would have given her, if that is the way the wind was blowing.

Q. Now, Captain, later in the night, the storm increasing and the wind blew harder. As the wind increased, what would you say as to what good seamanship required and the requirements in respect to the observations she should take as to her holding, and with respect to paying out more chain?

A. Well, I should pay more chain out right at first. I wouldn't wait until it blew harder, and then if it blew harder I would give her more chain.

Q. Would good seamanship require that he keep taking soundings to observe whether he was drifting?

A. Well, blowing as hard as that, and he only had thirty fathoms of chain out and another anchor chain astern; he had to have the deep sea lead out to see whether she was dragging, and I would have given her more chain before she started to drag.

Q. Now, between ten and eleven o'clock that night, the wind having increased, she dragging her anchors, her tackle rigged to take the strain off the windlass after the breaking of her chock became useless by reason of the hook straightening out, and either at that

(Testimony of David Gilmore.)

time or previous to that time her port anchor chain parted, and she dragged chart, taking off her jib-boom, and then she drifted, the wind shifting from the southwest, down upon the schooner "Stimson." I will ask you to state, under those circumstances if the "Stimson" riding at anchor with her full scope of chain out, one hundred and five fathoms, what if anything could the "Stimson" have done to avoid the collision?

A. Well, if I had been on the "Stimson," and saw that ship coming down on me, and after I had made up my mind which side I would have got some headsails and sheered her to one side as far as I could.

Q. Do you think that would be likely to be practical?

A. You could do it, you don't know whether it would result in value or not.

Q. Would it be likely to put you in the way of the other ship, would it not when the chances for observation in the storm would be such as existing at that time?

Mr. ASHTON.—We object as leading and cross-examination of his own witness and argumentative.

A. I said when I thought the ship was coming down on me and that if I could sheer my vessel, I would certainly put some headsails on her to try to avoid the collision.

Q. What would you say considering the weather and the time of night as to your being able to determine

(Testimony of David Gilmore.)

whether this ship would collide with you enough in time to do any good?

A. While she was dragging, she wasn't coming very fast; when a ship drags she don't come very fast, and after I saw I could get the ship fairly located if I could have set some sails and sheered off I would have done it.

Q. What would the ship do in that circumstance?

A. She would go a certain ways off, and then come back again.

Q. I will ask you if in time the ship might not swing back in line, and when she would, you would not be clear?

A. Well, she could be any worse than it was before she had swung, before she set the sail.

Q. Before you set a sail you could not determine whether the ship would pass you?

A. I say I would determine whether she would pass on the starboard side, and then I would get the sail and haul her to windward and sail her over to port. The vessel would swing a certain distance, not very far; but she would swing one hundred feet or two hundred feet, and give her a chance to pass by and then she would swing right back again.

Q. That is all.

Mr. ASHTON.—I have no questions, Captain.

(Testimony of witness closed.)

J. B. LIBBEY, a witness on behalf of libelant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. HUGHES.)

Q. State your name please.

A. J. B. Libbey.

Q. You are a master mariner? A. Yes, sir.

Q. And how many years' experience in seafaring, and handling vessels? A. Since 1871 or 1872.

Q. You are the manager of the Puget Sound Tugboat Company? A. Yes, sir.

Q. Are you acquainted with Shilshoal Bay?

A. Yes, sir.

Q. What kind of anchorage is it in that bay?

A. I would consider it good.

Q. Do you know anything about the currents in that bay? A. Yes, sir.

Q. What is the fact in respect to the currents there?

A. The fact is there is little or no current in Shilshoal Bay, don't amount to anything.

Mr. ASHTON.—Do you mean tidal current?

A. I suppose you mean set of the tide.

Mr. ASHTON.—You are referring to tidal currents only?

A. Yes, sir.

Q. (Mr. HUGHES.) Within half an hour or an hour after low tide, what current, if any, would set along the shore there?

(Testimony of J. B. Libbey.)

A. I have noticed much if any current along the shores of Shilshoal Bay. I have towed a great many logs along all around Shilshoal Bay, thousands of logs, and I never noticed any strong current of any description.

Q. I will ask you to examine this chart marked Claimant's Exhibit No. 12. On the afternoon of December 25th, 1901, the schooner "Stimson" lay at anchor at the point indicated by the cross at the letter "S," the schooner "Corona" at the point indicated at the cross at the letter "C" approximately, the schooner "Mildred" at the point indicated by the cross at the letter "M," and the tug "Tacoma" having in tow the German ship "Robert Rickmers," a ship in ballast, a large ship of a net register of over 2,100 tons. She was brought up to the location approximately where the cross is at the letter "R," and given anchorage there and she put out her port anchor with forty to forty-five fathoms of chain and made fast her riding chock, a device for holding the chain illustrated in Claimant's Exhibit No. 5. When the ship took up the slack of the chain, or at about that time that the chock was made fast, the chock broke the strain coming entirely on the windlass, and some ten or fifteen fathoms of chain more ran out, and the ship continued on when the chain was made fast or started to run out, dragging her anchor until she came down to the "Corona," a distance of about three-sixteenths of a mile. Then the tug picked her up, made fast a line and

(Testimony of J. B. Libbey.)

held her there for a time and she began to haul in chain and continued to do so until the tug had cleared her cable which had fouled in her propeller and made fast a cable on board the "Rickmers" and then towed her back again to approximately the original location. The "Rickmers" before being towed back did not at any time until she came to her second anchorage or afterwards take in more than ten or fifteen fathoms of the extra chain which had run out so that she at all times from the time she first put out her port anchor had out not less than forty fathoms of chain. I will ask you to state, Captain, whether or not in your opinion it was good seamanship for the "Rickmers" to come to anchor again and put out her starboard anchor with thirty fathoms of chain without having hoisted her port anchor and without doing any different with her port anchor than from the facts stated in my question.

Mr. ASHTON.—We object to the question as incompetent, and irrelevant, for the reason that it assumes conditions and hypotheses which cannot be supported by the testimony or the weight of the testimony to the present time in this case.

A. I consider it poor seamanship on the part of the master of the vessel.

Q. In what respect? State fully.

A. Well, from the fact that he had his anchor had dragged from the time of his first letting go. It would have been the proper thing for him to have

(Testimony of J. B. Libbey.)

sighted his anchor, that is, hoisted his anchor up to the surface so he could see whether his anchor was all right, and everything was clear about it.

Q. What would be the effect of his allowing his anchor to remain on the ground with his forty fathoms of chain out respecting the situation of his port anchor when he came to his berth the second time? And putting out his starboard anchor?

A. Why the tug taking him to windward with his anchor dragging on the bottom, the chain would necessarily trail right aft, and come along and pass over where that anchor was originally let go on the bottom, and the bight of the chain would in all probability catch the fluke of the anchor and foul the anchor.

Q. Under those circumstances, what necessarily would be the position of the port anchor?

A. The port anchor would lead right aft, and the starboard anchor would lead ahead, on the starboard bow.

Q. Which anchor would take the weight of the ship?

A. The starboard anchor altogether.

Q. Would, in your opinion, would it be good seamanship under those circumstances to have put out the two anchors in such position, in a southerly gale blowing at a mean velocity of fifteen to twenty miles an hour or upwards?

Mr. ASHTON.—Same objection. And I would like to have the understanding that I am objected for the same reason to all of these questions.

(Testimony of J. B. Libbey.)

Mr. HUGHES.—Certainly.

A. Decidedly not.

Q. Why not?

A. Because the strain of the vessel would come upon one chain, that is, the second anchor let go. The starboard anchor would have to hold the whole weight of the ship and any strain that might come, any attendant strain to the ship would be hanging to that chain, the entire weight of the vessel.

Q. Under those circumstances, riding with the strain of a ship coming upon the starboard anchor, what would you say as to what would be sufficient scope of chain, and the wind blowing with a mean velocity of fifteen to twenty miles an hour and upwards?

Mr. ASHTON.—We object to that as incompetent.

A. Well, I know of no rule, any established rule as to the requisite amount of chain which should be given to a ship. It is always enough, whether it might require forty-five or sixty or seventy-five or ninety or one hundred and five fathoms, or whatever length it requires to hold the vessel is the practice I have always followed.

Q. What is your judgment, under such conditions, considering the locations of the ships, and the character of the weather and of the wind, and the direction of it, and the fact, if I have not added it, the fact that the wind was squally, that is, blowing in gusts, what in your opinion, in the exercise of good seamanship, would

(Testimony of J. B. Libbey.)

be a proper amount of chain to pay out under such circumstances?

A. When she first anchored?

Q. On the starboard anchor, when she first put out her starboard anchor, assuming that her port anchor was in the condition I have described?

A. Well, not less than sixty fathoms to begin with.

Q. If the storm increased, or the velocity of the wind increased in violence and in fitfulness, what then, in the exercise of good seamanship, should be done?

Mr. ASHTON.—We make the same objection as before.

A. I would pay out chain on both anchors.

Q. If under those circumstances you thought it advisable to put out two anchors, having in mind now the fact that the first anchor had dragged when forty to forty-five fathoms of cable were out, that the riding chock or the device by which that port chain was held had broken, and that a tackle was made fast to it for the purpose of relieving the strain upon the windlass and that tackle having been made fast by a hook an inch and a half or three-quarters in diameter, in what manner in your opinion should the two anchors have been put out, in the exercise of good seamanship?

A. In the amount of chain?

Q. As to position and scope of anchor and chains?

A. The anchors should have been spread sufficiently so that they would not be liable to foul each other, and

(Testimony of J. B. Libbey.)

the scope of the chain would be, say, from sixty to seventy-five or ninety fathoms.

Q. Referring to the device which is shown on this diagram which is marked Claimant's Exhibit No. 5, what is the purpose of or the intention of such a mechanical device on a ship?

A. The purpose is to grab the chain and hold it and to relieve the windlass of any strain. You see this chain goes through here, and that is screwed up on each side and clamp the chain. The holding device is always forward of the windlass so after it is clamped, it takes the whole strain off the windlass.

Q. What is the strength, the effective strength of such device as compared with the tensile power of the chain?

Mr. ASHTON.—Objected to as incompetent.

Q. That is, assuming that it is a proper equipment?

A. That is supposed to hold the full strength of their chain or more. That is known as a riding chock in our vessels.

Q. If, under the circumstances I have described, that device broke when the ship took up the strain, or rather, when the full force of the ship, or the weight of the ship, came upon the cable and compressor, would good seamanship require in your judgment that that anchor should be hoisted so that both anchor and chain could pass under the inspection of the officers of the ship to ascertain whether the same strain that had broken the chock or compressor

(Testimony of J. B. Libbey.)

had in any way impaired the strength of the anchor or the chain, or broken it?

Mr. ASHTON.—Objected to as leading and suggestive.

A. It is good seamanship to always sight an anchor after it has dragged.

Q. Now, Captain, assuming that these ships, when the "Rickmers" the second time came to her anchor, were so located that their positions, the positions of the vessels were as given by the officers as indicated on this chart, Claimant's Exhibit No. 12, and as will appear from the use of dividers the distances shown between these ships was about eleven hundred and forty feet, what would you say as to whether that was a good berth, and a safe one?

Mr. ASHTON.—That is objected to as incompetent.

A. I would say that the berth was safe.

Q. What would you say as to the situation of these ships with to the ability of the master of the "Rickmers" to give sufficient scope, in your judgment, to his chain, to meet the conditions of the weather?

Mr. ASHTON.—We object to that as incompetent and irrelevant, and further that this witness is not qualified of these facts.

A. In my judgment he had ample room to give his vessel sufficient scope of chain.

Q. Now, the tackle which was rigged to the port chain after the riding chock, or as their witnesses call it, the compressor, broke, was a tackle somewhat of the char-

(Testimony of J. B. Libbey.)

acter of a luff tackle, in which the hook at one end was made fast in a band of manila rope or strap of manila rope around the cable and was made fast in some way to a band or shackle around the foremast. About ten o'clock P. M., or shortly thereafter, on that night the wind increasing, in some way this hook pulled out. It was subsequently discovered that the port anchor chain had parted, and the port anchor was gone. The "Rickmers" then continued drifting until she came in collision with the "Mildred" and took off her jib-boom. She then drifted until she finally came into collision with the "Stimson." Now, keeping in mind the location of these ships as shown on this chart, I will ask you to state what, if anything, could be done effectively by the officers and crews of these two vessels to avoid the collision; the storm increasing in velocity and the wind shifting to the southwest, and blowing in gusts, and being fitful?

Mr. ASHTON.—We object to that as being incompetent, leading, argumentive and not based upon a proper hypothesis.

Q. What could either of these vessels have done to avoid the collision?

A. Payed out chain, if they had any left.

Q. What would say that the "Rickmers" could do and what is your opinion would be the effectiveness of their attempts?

A. The "Rickmers" could not have done anything, it

(Testimony of J. B. Libbey.)

don't seem to me, only to continue to drag. All she could do was to pay out chain, and she had nothing else to do.

Q. What could the "Stimson" do, her chain being payed out?

A. They might have attempted, when nearing collision, to have sheered or veered the vessels one way or the other.

Q. Keeping in mind the stormy night, which was dark and stormy, and the wind blowing from twenty-four to thirty miles an hour, and odd, or more, and in gusts and being fitful in direction, so fitful that the ship veered to the westward as it struck the "Mildred," and afterwards goes further northward where it strikes the "Stimson," what in your opinion would be the effectiveness of any attempt made to avoid the "Rickmers" by the "Stimson"?

A. Oh, I don't imagine there was any possibility of their avoiding the collision by the shifting of any wheel or hoisting any headsails. She simply could go a short distance until she would bring up on the chain, and that would swing the vessel's head and turn her in the opposite direction, and then she would go a certain distance on that tack, and she would simply be racing back and forth across the track of the "Rickmers"; and it is merely problematical which way she would strike the vessels; she was bound to strike her one way or the other, which way she would strike the "Rickmers."

Q. By adopting that course and putting up any sail,

(Testimony of J. B. Libbey.)

what would be the effect as to whether she would expose a broader scope to the course of the "Rickmers"?

A. Oh, certainly she would expose a great deal more, of course, in the track of the "Rickmers"; she was directly across the track of the drifting down to her, and the way she was going, sheering across the direction, if she were doing that, that the "Rickmers" was drifting.

Q. And the wind being fitful in its course would have also affected the course of the "Rickmers"?

A. Yes, sir, any vessel at anchor is swinging all the time, every time there is the slightest shift of wind she swings in the direction it strikes her.

Q. And the other vessel dragging her anchor would be affected by the change in the course of the wind?

A. Yes, sir; and more particularly if they put up any sail.

Cross-examination.

(By Mr. ASHTON.)

Q. Captain Libbey, you were saying a moment ago that your idea was that the "Stimson" could not have done anything when the "Rickmers" was approaching her?

A. I said she might attempt to alter her wheel, shift her rudder, or possibly put up some headsails.

Q. Well, now, supposing she put her helm hard to starboard, that would have pushed her off for considerable time, with one hundred and five fathoms of chain?

A. With the weight of your chain, your rudder would not have much effect in an ordinary tide way.

(Testimony of J. B. Libbey.)

Q. It—wouldn't it have given that ship a sheer?

A. Possibly. I wouldn't say it wouldn't, but I wouldn't say it would.

Q. Well, you don't want to be understood as saying that the "Stimson" couldn't have dodged the "Rickmers"?

A. She might have attempted to.

Q. Now, Captain, with the wind at that velocity, it would have taken but a very few instants of time, a very few seconds for the "Rickmers" to have passed the "Stimson" after she reached her, wouldn't it?

A. I don't know how fast she was drifting, Mr. Ashton. Of course, if she was drifting rapidly, it wouldn't take very long to pass the ship.

Q. Now, just suppose she was pretty high out of the water, she wasn't laden, she was in ballast, she was a large, heavy ship, as you know?

A. Yes, sir, I know the ship well.

Q. Now, the wind was blowing, we will say, anywhere from sixty to seventy miles an hour. Don't you know as a master mariner of experience that the ship would have passed another ship in almost instantly, or in a few seconds of time?

A. It depends upon how hard her anchors were holding.

Q. I am assuming her anchors were in the ground and she is drifting.

A. Yes, sir, it wouldn't take very long for her to pass the "Stimson."

(Testimony of J. B. Libbey.)

Q. But a few seconds?

A. Well, I think minutes anyway, perhaps two or three or four minutes.

Q. That is a long period of time, Captain?

A. Yes, I know that; but there is another ship, you know, and one hundred and five fathoms of chain out.

Q. You think it would take her even quite one minute to get by a ship like the "Stimson," before a gale of wind like that? A. Yes, sir.

Q. You think it would take more than one minute?

A. Yes, sir.

Q. Now, you wouldn't like to fix anything definite about these things, would you?

A. No, sir, I would not.

Q. Are you the manager to whom Captain Orrison referred in his testimony? A. Yes, sir.

Q. To whom he reported that night?

A. Yes, sir.

Q. What time did he report to you?

A. Why, I think it was between six and seven o'clock, along about that time.

Q. You are the manager of the company, and part owner or one or the main owner of the company that own both the "Tyee" and the "Tacoma"?

A. Yes, sir.

Q. And still own both tugs? A. Yes, sir.

Q. And they were both operated under your management and direction at that time? A. Yes, sir.

(Testimony of J. B. Libbey.)

Q. What is your recollection as to the wind that Christmas night?

A. There was a strong breeze; it was blowing hard.

Q. You would call it a storm, wouldn't you?

A. Yes, sir.

(Testimony of witness closed.)

R. B. ROSS, a witness on behalf of the libelant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. HUGHES.)

Q. What is the position you occupy, Mr. Ross?

A. Engineer of the tug "Tyee."

Q. In December, 1901, were you the engineer of the tug "Tacoma"? A. Yes, sir.

Q. How long have you been engineer of one of the tugboats of the Puget Sound Tugboat Company?

A. About eleven years.

Q. Were you on board of the "Tacoma" while towing up the "Rickmers" from Port Townsend to the place of anchorage in Shilshoal Bay on the afternoon of December 25th, 1901? A. Yes, sir.

Q. What is your position or location on that ship—what is the station that the engineer occupies there? Describe it so as to show your opportunity for making observations?

A. He is generally stationed at the engine in order

(Testimony of R. B. Ross.)

to answer bells; but on this occasion I was standing around; the second or assistant engineer was on watch.

Q. In the engine-room?

A. Yes, sir; it was a cold evening; and I generally sit inside.

Q. Is the engine-room above deck?

A. Yes, sir, on the main deck.

Q. From the windows of the engine-room can you see out? A. Yes, sir.

Q. Just state what you observed there?

A. Well, it was blowing pretty hard from the south-'ard; I don't know, southeast or south—it was south'ard; it was blowing so hard we were making no headway with this vessel, and we towed as hard as we were able to, and we went in to shore under West Point to anchor, and we anchored her there, and after we anchored her, she dragged, and we went down alongside of her and in maneuvering got the wire hawser in the wheel and threw a rope to which he made fast to the stern and cleared the hawser, and I went ahead again and towed her up to windward and reanchored her; and we left shortly afterwards.

Q. What, if any, conversation did you hear between the captains?

A. I heard the captain of the tug ask him if he thought he was secure, and he said he thought he was; said he was all right.

(Testimony of R. B. Ross.)

Q. When they were hauled up the first time, which anchor did they put out?

A. They put out the starboard anchor the second time.

Q. The first time which anchor was put out?

A. The port.

Q. Did you observe the other ships there in the bay?

A. Yes, sir.

Q. Did you make observations enough so you are able to tell relative to the location of those ships?

A. Not very precisely.

Q. What is your recollection as to the distance as to the space between the ships, whether it was, as to its sufficiency?

Mr. ASHTON.—We object as leading, and also because the evidence given by the witness shows that any testimony from him on this point would be incompetent.

A. Well, from seeing ships anchored there for so many years, I considered it a pretty good position he was in.

Cross-examination.

(By Mr. ASHTON.)

Q. Mr. Ross, how far were you off from West Point, how far out in the Sound were you when you decided to go in there for shelter?

A. Well, I should judge about a couple of miles and a little to the northwest of it, out to the north from it.

Q. It would be more west than north?

A. Yes, sir, I think it would, as near as I could judge.

(Testimony of R. B. Ross.)

Of course, I don't know the exact points of the compass; never looked at it, but as near as I could judge, it was probably a little west of northward.

Q. About west by north?

A. Well, probably it would be nearer west than north, I think.

(Testimony of witness closed.)

Adjournment of further hearing of said matter was taken, to convene for further hearing by agreement of counsel.

Seattle, Washington, 10 A. M.
Friday, February 19, 1904.

Present: Mr. HUGHES, for Libelant.
Mr. KELLY, for Claimant.

Continuation of proceedings as follows, to wit:

Captain REDERICK ALBION HALL ERRATT, produced as a witness for and on behalf of libelant, in rebuttal, having been first duly cautioned and sworn, testified:

Q. (Mr. HUGHES.) What is your business, Captain?

A. I am a seafaring man, am at present captain of the four-masted schooner "Ethel Zane."

Q. What is the size of your ship, Captain?

A. Four hundred and eight tons.

Q. Where do you sail usually?

A. Well, we sail on the coast here; this winter I have

(Testimony of Captain Rederick Albion Hall Erratt.)

been running between Puget Sound and San Francisco and San Pedro.

Q. How long have you been a master mariner?

A. Nine years.

Q. How long have you been at sea?

A. Twenty-four years since I started in.

Q. Have you anchored frequently at Shilshoal Bay?

A. This is my first time within five years—first time in five years.

Q. Your ship is now at anchor there, is it?

A. Yes, sir.

Q. Captain, I wish you would observe this chart, marked Claimant's Exhibit No. 12; on the evening of December 25, 1901, the four-masted schooner "Stimson" was lying at anchor approximately at the place in Shilshoal Bay marked with a cross by the letter "S"; she was lying on the full scope of her chain, 105 fathoms; the three-masted schooner "Corona" was lying approximately at the place marked by the red cross at the letter "C," having out about 60 fathoms of chain, riding to one anchor; the schooner "Mildred" was located at the point indicated by the red cross at the letter "M"; she is a three-masted schooner and was riding at about 65 fathoms of chain—60 to 65 fathoms of chain; that was the relative situation and location of the three ships when shortly after four o'clock on the afternoon of that day, the wind blowing from fifteen to twenty-five miles an hour, the German bark "Robert Rickmers," a four-masted bark

(Testimony of Captain Rederick Albion Hall Erratt.)

of about twenty-two hundred net register, a ship 267 feet in length, in ballast, came to anchor in tow of the tug "Tacoma," at a point approximately at the cross with the letter "R" on this chart; she put out her port anchor with 40 to 45 fathoms of chain; let go her hawser, made fast her compressor or riding chock upon the chain—a device for holding the chain immediately behind the hawse pipe and in front of the windlass; this compressor or riding chock—I use the two names because both are used in the testimony of the witnesses—split, about ten or fifteen fathoms of chain ran out and then the ship began to drag and she dragged down to the schooner "Corona," but without colliding; when she had dragged to that point the tug which in the meantime has been engaged in taking care of the hawser that had been let go, overtook her and made fast to her and started to tow her back; before towing her back what should the "Rickmers" have done with her port anchor in the exercise of good seamanship?

Mr. KELLY.—We object to this question, first, because it has not been shown that this witness is a competent witness to testify as to what or what is not good seamanship under the circumstances; second, because the question does not include all of the facts relative to the position of these vessels and the circumstances under which the anchorage was made; third, for the reason that some of the facts stated in the question are not in accordance with the evidence in the case.

(Testimony of Captain Rederick Albion Hall Erratt.)

A. Well, he ought to have lifted his anchor up—he ought to have hove his anchor up so he could see his anchor, to see whether it was foul or what the matter was with his anchor before he came to anchor again.

Q. State whether or not he should have kept his anchor up while he was being towed back.

Mr. KELLY.—Same objection as above.

A. Why, certainly, he ought to have kept his anchor up.

Q. Why? What would be the danger to the subsequent usefulness of the anchor if he allowed it to drag back? A. It might have got foul.

Q. Now, assuming that the anchor was not hoisted off the ground, but that the tug towed her back to approximately the place indicated by the cross at the letter "R" and she then put out her starboard anchor with 36 fathoms of chain, having in the meantime hove in on the port anchor after she had dragged the amount of chain that she had run out on the breaking of the compressor, leaving 50 fathoms of chain on th port anchor. What, I will ask you, would be the serviceableness of the port anchor in holding that ship?

Mr. KELLY.—Same objection as before.

A. It would not be any.

Q. Why not?

A. Well, if he had that anchor down when he towed back he did not know whether that anchor was foul or not. Another thing, the anchor—if he towed back to that place

(Testimony of Captain Rederick Albion Hall Erratt.)

again, the anchor must lead aft underneath the vessel, and when he put his second anchor down there was no strain came on the other anchor.

Q. Assuming that the wind was blowing fifteen to twenty-five miles an hour, what would you say as to the sufficiency of the scope of chain under the facts as I have stated them, that is to say, with the starboard anchor out on thirty fathoms of chain and the port anchor out on forty fathoms in the way that I have described it?

Mr. KELLY.—Is it understood, Mr. Hughes, that my objection runs to all these questions without my repeating it each time?

Mr. HUGHES.—Yes, sir.

A. Well, he ought to have had at least sixty fathoms of chain out on that anchor.

Q. On which anchor?

A. On this second anchor that he let go. He ought to have given her at least sixty fathoms of chain where the wind was blowing the way you say it was.

Q. And if the wind increased subsequently during the evening, what, in the exercise of good seamanship, should he have done?

A. He ought to have given her more chain.

Q. What would you say if the weather became worse and the wind increased, as to the seamanship in not taking up the port anchor, examining it and recasting it?

A. I should say it was very poor seamanship. It was carelessness on the part of the master in not doing it,

(Testimony of Captain Rederick Albion Hall Erratt.)

having his mates heave that anchor up, and sight the anchor to see that it was clear.

Q. In riding from two anchors with the wind blowing in squalls and ranging from fifteen to twenty-five miles an hour and increasing later at night, how should the two anchors lead, or how should the ship lead from the two anchors?

A. Well, she ought to lead right behind the anchors—the anchors ought to lead right ahead, rather.

Q. She should tail from the anchors?

A. She should tail from the anchors.

Q. Should the anchors be spread, as they should be under the facts as I have stated them, in order to hold the ship properly and make the two anchors serviceable?

A. Well, generally when there is more chain out on one anchor than the other if you can spread them a little it is better to spread them a little, not too much, because if you spread your anchors too much, why, generally the strain comes more on one chain at one time than it does on the other; if the vessel swings it will come on one chain and when she swings the other way it will come on the other chain; where they lay both ahead, why, the vessel swaying that way (indicating) the strain will come more even on both anchors.

Q. Now, Captain, between ten and eleven o'clock that night, or thereabouts the wind having somewhat increased in velocity the "Rickmers" began to drag and she drifted until she struck the "Mildred," taking off her jib-

(Testimony of Captain Rederick Albion Hall Erratt.)

boom; passing clear of the "Mildred" she continued to drift, changing her course so that she came into collision with the "Stimson," about half-past eleven o'clock; during that period the wind blew in gusts, a high wind, and at the weather observatory in this city, according to the automatic register of the velocity of the wind, it was blowing at from twenty to twenty-five miles with occasional velocity as high as thirty-two and thirty-five miles; under those conditions what, if anything, could the "Stimson" do to clear her, the night being dark and rainy and the wind as I have described it?

A. Well, I don't see as he could do much of anything. He could not—in the first place, if that vessel was dragging he could not tell whether that vessel was dragging or she was sheering; if it was dark and rainy as you say it was—nasty weather like that—the man that was watching, he could not tell exactly until that vessel got pretty close whether that vessel was sheering or whether she was dragging.

Q. Would his own ship sheer? By that I mean the "Stimson"; would it swing on its hawser?

A. Well, it would be hard to sheer her.

Q. I say, would the "Stimson" swing herself—riding at anchor in such a wind would it be swaying back and forth?

A. Now, you can take a vessel, if she was low in the water she would not sheer as much as if she was high out of the water. If that vessel is in ballast she has a high

(Testimony of Captain Rederick Albion Hall Erratt.)

side out; the wind might sheer her; you take a vessel that is low in the water, where the wind could not get any force on her, why, she would not sheer—she might sheer a little and she might not.

Q. After it could be discovered by the watchman that she was actually dragging and likely to come upon the ship, would there be time to do anything aboard that ship in the way of setting sails, assuming that the ship had been loading for fifteen days and her decks were clear as they are in loading lumber?

A. Well, in loading lumber, why, generally there is nothing ever clear; we have to hoist our booms—aboard of them schooners we have to hoist them away up; there is ten or twelve feet from the saddles, and the ropes is always laid up on the pin rails up in the rigging and there is nothing very handy around the decks. We are supposed to have the decks all clear so we can load lumber.

Q. How long would it take to hoist her fore staysail, say, under such conditions, in the night time, with a ship like the "Stimson," engaged in loading lumber and lying there at anchor?

A. Well, I don't think you could do it in less than twenty minutes anyway. It would depend a good deal on how quick the men would get out for him.

Mr. KELLY.—Now, at this point claimant moves to strike the last question and answer upon the further ground, in addition to the other objections, that it assumes a state of facts not shown in the testimony in this case.

(Testimony of Captain Rederick Albion Hall Erratt.)

Mr. HUGHES.—If you mean about the loading of the lumber you did not hear the testimony. We put in testimony as to how many days she had been loading lumber—fifteen days—and how she had some six hundred thousand feet in her and all that sort of thing.

Mr. KELLY.—There is nothing in evidence as far as I know as to the condition of the "Stimson's" deck at this time, and I will put my objection in for what it is worth.

Q. Captain, if you had been aboard the "Stimson" and had known that the "Rickmers" was drifting, the weather and time of night being as I have heretofore stated, and if you had had ample time would you have considered it safe to attempt to set any sail?

A. Well, the rudder would not have much effect on the vessel laying that way without there was a strong current. If there had been a strong current there, why, then he could have sheered—probably have sheered his vessel. But as there is not much of any current in that bay there, why, if I had been in his place I would have done just the same as he did himself—laid there. I do not see that he could have done anything else.

Q. Do you think it would have been safe to have attempted to set any sail, and if not, why not?

A. Well, I think if he had set any sail that vessel dragging down on him that way that he was just as liable to fill on the wrong tack as he was on the right; therefore, if he had filled on the wrong tack he would have went into her instead of her coming into him.

(Testimony of Captain Rederick Albion Hall Erratt.)

Q. What experience have you had in handling sailing vessels on this coast?

A. Well, I have been out here since 1889; I have been master of different vessels here for the last nine years.

Q. Sailing vessels?

A. Sailing vessels—all schooners.

Q. And prior to that?

A. Prior to that I sailed mate and second mate in Spreckler employ and in different other employs.

Q. On sailing vessels?

A. On sailing vessels. I ain't no steamship man, my license don't call for it. I am a licensed master in sailing vessels.

Cross-examination.

Q. (Mr. KELLY.) Your experience, Captain, has been with what rigs, mostly? A. Schooners.

Q. Fore and aft rig?

A. Yes, sir; that is, since I have been master. Before I have sailed in a few rigged vessels, not too much of any advantage at all, mostly in schooners all my life. The first trip that I ever made to sea was in a schooner and I like a schooner better than I do a square rigged vessel.

Q. Why?

A. Because I think there ain't so much going aloft and you can get sail on them, there ain't as much work in handling them as a square rigged vessel.

Q. Much easier to handle, are they not?

(Testimony of Captain Rederick Albion Hall Erratt.)

A. Yes, they are a little easier.

Q. Much quicker to make sail and reduce sail or to so maneuver your sail that the vessel may be put in this direction or that direction, than in a square rigged, and they are much easier to come about in a fore and aft rig than in a square rig; is not that true?

A. Yes—well, they come about one as quick as the other one. A square rigged vessel, you have to haul yards, more hauling and pulling to it, but they will come around—one will come around just as quick as the other one will. The only difference is you can handle a schooner with less men than what you can handle a square-rigged vessel.

Q. Suppose that you are dead in the wind; it is a very simple thing, is it not, to veer the vessel's head one way or the other by maneuvering your foresail or fore staysail?

A. You can't do it very well with a fore and aft rig.

Q. But you can do it better with a fore and aft rig than with a square rig, can you not?

A. If you are dead in the wind she will go which way she has a mind to. In a head wind hauling her spanker over will pull her around.

Q. How about hauling her fore staysail over to windward; will that pull her around?

A. Sometimes it will and sometimes it won't. If there is any wind in the spanker it won't have any ef-

(Testimony of Captain Rederick Albion Hall Erratt.)

fect, because the pressure will bring her up against it, put her around on the other tack.

Q. Suppose that there is no sail set except a fore staysail; what would be the effect of pulling the fore staysail over to windward?

A. Well, the effect would be that she might go the right way and might go the wrong way.

Q. Explain that, if you will; how might she go the wrong way?

A. Well, in getting under way in a vessel you would naturally heave your anchors short, you would set your sails—set your staysail; you haul your spanker in the opposite way, whichever way you want to go, or the way that you want to go, and you haul your staysail the opposite way and you station your men by the jibs; as soon as your anchor is off the bottom and you see that the vessel has sheered, why, you run the rest of your head sails up, but you cannot do that with headsail without you have aftersail; you have got to have headsail to work against the headsail to get the right tack.

Q. That is when you are hove short?

A. That is when you are hove short and getting under way.

Q. Now, do I understand you to say, as a seafaring man, that assuming that a vessel is lying at 105 fathoms scope of chain with no sail set upon her at all, that if you put her fore-staysail or some part of it on the ves-

(Testimony of Captain Rederick Albion Hall Erratt.)

sel and haul it over to windward that you can't tell which way the bow of that vessel is going to run off?

A. No, sir, you can't.

Q. You are satisfied with that answer?

A. Yes, sir.

Q. Are you familiar with the "Stimson"?

A. This is the first time that—well, last trip I went out past the Cape with him at the same time.

Q. You have seen the vessel?

A. I have seen the vessel at a distance.

Q. How is she built? Is she sharp forward or is she bluff in the bows?

A. Well, I have never been close enough to her to tell.

Q. It would make some difference in your answer, then, as to how far this forestaysail could have been pulled over to windward? A. Yes.

Q. That would make some difference, would it not?

A. Yes.

Q. Now, you spoke of the danger of setting a sail; what would be the particular danger, under the circumstances of the question that was put to you, of putting a fore staysail, or some part of it, upon the "Stimson" under the circumstances in which she was at that time?

A. Well, as I say, she might sheer the wrong way.

Q. That is the only danger, then? A. Yes.

Q. That you spoke of?

A. That is the only danger.

(Testimony of Captain Rederick Albion Hall Erratt.)

Q. And if that was a danger which was not ordinarily to be apprehended it would have been reasonably safe? What would you say to that, it would have been reasonably safe except for the danger of sheering the wrong way?

A. Well, yes, it would be; that is, about the only danger that I can see it, that the vessel might sheer the wrong way and instead of clearing him—clearing the other vessel—he might strike the other vessel instead of the other vessel striking him.

Q. Even under your idea of the effect of a fore staysail under those circumstances there would be an even chance that she might sheer the right way, would there not?

A. Well, generally—twice out of three that she will go the wrong way.

Q. That is your experience?

A. That is my experience; and with most everything else. If you want to do anything, why, generally you think you are going to be right and instead of that you are wrong.

Q. Well, if you were a philosopher instead of a sea captain then you would be inclined to be a pessimist. If you saw a vessel some six or eight times your size dragging down upon you in the night-time with the danger of collision imminent, do I understand you to say that you would not have considered it good seamanship

(Testimony of Captain Rederick Albion Hall Erratt.)

to take the chance that the vessel might sheer the right way to avoid a collision?

A. Well, if you had seen her in time so as to have plenty of time to get your men out and do something, why, it would be good seamanship to try to do something.

Q. To try to do something? Exactly.

A. But if you have not got the time, why, it is your place to hold on.

Q. Certainly.

A. And stay where you are.

Q. How much time would be necessary to adopt the chance which we have been talking about?

A. Well, it would depend according to what condition the vessel is in. If the vessel is the same as a vessel loading lumber there and everything is all cluttered up there and you can't tell which is which or what is what, why, it would need more time.

Q. How much time?

A. Well, it would take at least three quarters of an hour anyway to get your men out and get things straightened so you could get hold and get some sail on anyway.

Q. I understand you to say, then, that under the circumstances of the case as it has been set forth in the question put to you that in your opinion it would have taken the "Stimson" three-quarters of an hour to have attempted to set her fore staysail?

(Testimony of Captain Rederick Albion Hall Erratt.)

A. Not the fore staysail.

Q. Well, that is the sail I am talking about.

A. If it was only the fore staysail alone that he would get on, why, if his men got out, why, it would take at least twenty minutes anyway.

Q. He could do it in twenty minutes, could he not?

A. Well, I think I could. It would depend a good deal on what kind of a crew I had.

Q. Well, with an ordinary crew, under those circumstances you think that you could get a fore staysail up so that you could maneuver it inside of twenty minutes? A. Yes, I think I could.

Q. Are you familiar with the tides in Shilshoal Bay?

A. Well, as far as I know about them there is not much tide in that bay from my experience.

Q. Do you know what the run of the tide ordinarily is there?

A. No, I don't know exactly what is the run of the tide.

Q. Well, have you any impression upon the subject?

A. Well, I don't think it—in and around the point there, if you lay pretty close in, you don't get much tide at all to amount to anything.

Q. Taking the position of the "Stimson" here as indicated on the chart (pointing on Claimant's Exhibit No. 12)) what, in your opinion, is the force and strength of the ordinary tide there?

(Testimony of Captain Rederick Albion Hall Erratt.)

Mr. HUGHES.—You are speaking, of course, of the current now?

Mr. KELLY.—I am speaking of the current, yes, sir, as it shifts with the tide.

A. Well, it would depend a good deal on how full the tide has advanced.

Q. I am not asking for an opinion now, Captain; I am asking you for what you know of the facts.

A. Well, if it is half tide there, why, the tide runs stronger and it would be—

Q. How much would it run at half tide?

Mr. HUGHES.—That is immaterial—all this is immaterial—it being an undisputed fact in this case that it was low tide, according to claimant's own proof.

A. Oh, I suppose about a mile an hour.

Q. I understood you to say, in answer to a question which Mr. Hughes put to you, that the "Stimson" would swing at her anchor, lying as she did, more if she were in ballast than she would if she were loaded or partly loaded? A. Yes.

Q. That is true.

A. A vessel is liable—the higher out of the water she is the more force the wind would have on her.

Q. Then the amount with which she swings at her anchor—the distance through which she swings—and the rapidity with which she swings depends upon the amount of surface which is exposed to the wind, does it not?

(Testimony of Captain Rederick Albion Hall Erratt.)

A. Yes, it would depend upon the wind. If she had a high side as—you take that vessel lying out there in the bay now; you take a vessel that was not any higher, or not more than half as high, as that vessel is that is lying there, why the wind would not have as much force on her—that vessel would sheer more than a vessel that is lower.

Q. What I have said is true, then—it is the amount of surface which is exposed to the wind which determines how much and how quickly a vessel will swing when she is at anchor? A. Yes.

Q. That is true, is it not? A. Yes.

Q. Then, if the fore staysail were put up, the vessel, although she might be heavily loaded, although she might be fully loaded and at anchor, it would swing or veer from side to side quicker than she would if her fore staysail were not set; is not that true?

A. A vessel that is loaded?

Q. Yes?

A. She would not swing as quick as a vessel that is light.

Q. That is true; but the amount or distance through which she swings and the amount of her swing and the rapidity of the swing depends on how much surface is exposed to the wind, does it not? You have just said so. A. Yes, sir.

Q. Then, if you expose more surface to the wind by hoisting a sail, the vessel will swing to one side or the

(Testimony of Captain Rederick Albion Hall Erratt.)

other, as the case may be, more than if the sail were not hoisted, will she not?

A. She will if you put the right sail on her.

Q. Well, what would you consider to be the right sail in order to get her to swing that way?

A. Well, I should want some aftersail as well as headsail on her to get her to swing the right way.

Q. But the hoisting of a headsail alone or the hoisting of an aftersail alone would have a tendency to make her swing, would it not?

A. Yes, it would help—the aftersail would, but the headsail—as I say, with the headsail she would be liable to go on the wrong tack—just as liable to go on the wrong tack as she would on the right without she had aftersail.

Q. The "Stimson" was a four-masted schooner, was she not? A. Yes.

Q. You call the aftersail on a four-masted schooner the spanker or staysail?

A. The aftersail on a four-masted schooner is called a spanker.

Q. And the mast is the jigger mast?

A. The spanker mast.

Q. It is not customary to carry deckloads on four-masted schooners or anything abaft of the spanker mast, is it?

A. According to how the vessel is built and how she trims.

(Testimony of Captain Rederick Albion Hall Erratt.)

Q. What is the usual custom?

A. Well, I guess it is about six of one and half a dozen of the other. Some vessels you get in you have to. Now, my vessel, I have to run my lumber as far aft as I can all the time, keep it aft, because she goes down by the head very easy.

Q. Do you carry a deckload then customarily abaft of the spanker mast?

A. Carry a thirteen foot deckload.

Q. Abaft of the spanker mast?

A. I carry from the main deck to the top of the deckload, that is about thirteen feet; I generally have to run the ends of my lumber aft within six inches of the house; that goes about a foot abaft the mast until I get up above the house; when I get up above the house then I have to get aft further.

Q. On the top of the house?

A. On the top of the house.

Q. You do not know whether that was the custom on board the "Stimson" or not?

A. No, sir, I do not. I never have been aboard the "Stimson," never had my foot aboard of her.

Q. The staysail has not any boom, has it, the fore staysail?

A. The fore staysail on these big vessels always have a boom; on a small vessel—

Q. It is not a boom like the boom on the mainsail or

(Testimony of Captain Rederick Albion Hall Erratt.)

staysail, it is a mere pole running along the foot of the sail?

A. It is quite as big, but it is a boom, but it is not quite as large.

Q. Now, you were discussing with Mr Hughes the proper method of anchoring a vessel, if she could do so, should anchor with her anchors lying fore and aft so that they tail up with the vessel; is that right?

A. I say that the chains, where the anchors is not spread too much, the more they lay ahead the more even strain will come on both anchors.

Q. The more they lay ahead, but did I not understand you to say they should not be spread?

A. I say that to spread them a little, not too much.

Q. Well, will you tell me how much that spread should be, in your opinion, and how the anchors should be placed for the greatest security?

A. Well, twenty feet apart is plenty.

Q. It makes no difference how big the vessel is?

A. No, it doesn't.

Q. Over twenty feet you would not advise?

A. No.

Q. I want to ask you, Captain, if the "Rickmers," situated generally as indicated upon this chart, were to drag down a distance of about twice her own length on to the schooner "Mildred," following the schooner in such a manner as to get athwart her hawser, carry away her jib-boom and top hamper chain forward, the

(Testimony of Captain Rederick Albion Hall Erratt.)

circumstances of the wind and weather being such as has been described to you in the previous questions, whether that could have happened without creating a good deal of disturbance and noise?

Mr. HUGHES.—I object to that as incompetent.

A. Well, it might cause a good deal of noise, hollering and one thing and another, and it might in some cases—some men might take it cooler than others would and might not cause any disturbance at all. Some men might stand there and give their orders and not make any noise about it at all, where other men would get so excited that they would not know what to do only just holler and shout.

Q. Would it not have necessarily created some disturbance for one vessel to come athwart of another in that way so as to break out her jib-boom and carry away her top hamper?

Mr. HUGHES.—Same objection.

A. Why, yes, the breaking of the wood—

Q. And necessarily would, would it not?

A. Why the boom, of course when it would break it would cause some noise.

Q. Now, when vessels are foul of each other in that way it usually takes some time for them to break apart, does it not?

Mr. HUGHES.—Same objection, that it is incompetent and immaterial.

(Testimony of Captain Rederick Albion Hall Erratt.)

A. Sometimes it does and sometimes it don't, according to how the vessel would strike. If she struck the other vessel in such a way as to just knock the jib-boom out of her and swing clear of her, why, it would not take much to get clear, she would naturally swing clear herself. Of course if she got athwartships of the vessel and carried away her jib-boom that way, why, then, it would be a good deal of trouble to get clear of one another.

Q. Under either of those circumstances there would be more or less disturbance and noise about there, would there not?

Mr. HUGHES.—Same objection.

A. Well, as I said before, that it might with some men and other men it might not.

Q. Now, assuming that the vessels lie in the position as indicated upon the chart and that from the time that the "Rickmers" was in collision with the "Mildred" to the time when she first came into collision with the "Stimson" that not less than a half hour expired: What should you say would have been the duty of a competent, careful and vigilant lookout upon the "Stimson" under those circumstances as to notifying his superior officer of what was going on?

A. Well, if he is in that way as you say, if the man is a good mand and you could depend upon him, and he could see that that vessel was dragging and was sure

(Testimony of Captain Rederick Albion Hall Erratt.)

of it, why, it was his place to call the officer or the captain, which ever he was told to.

Q. Which ever was in charge of the vessel?

A. Yes.

Q. And could a collision of the kind which I have described with the consequent carrying away of the top hamper, and so forth, between the "Rickmers" and the "Mildred" have occurred, the vessels being in the proximity as indicated her on the chart, without having been a warning to a careful, competent and vigilant lookout that there were matters happening to windward of him which required the attention of his superior officer?

A. Well, if it was a very bad night, as they say here, why, a good many things could have happened that the man on the lookout there would not know anything about. If it had been good, clear weather where a man could see, why, he ought to have been able to see that distance to see that there was something wrong, but if it was a night as stormy and black, where a man can't make out things, can't see very plain, why, a man couldn't do much—couldn't tell exactly what was going on.

Q. He could hear what was going on, could he not?

A. It is according to how the wind would blow.

Q. Well, he is here to leeward?

A. Well, you can be to leeward and you can't hear—if it is blowing hard. I have had my mate aboard the

(Testimony of Captain Rederick Albion Hall Erratt.)

vessel very often—something would carry me away forward and I have had him rush forward and I would sing out to him and ask him what it was that carried away, and I could not make out what he would say to me, I would have to go forward to him myself and find out.

Q. You think the same rule would hold as applied to the noise and disturbance occasioned by a collision between two vessels, that it would not be heard to leeward here?

A. Not if it was very bad weather and blowing very hard, I do not think it could be heard that distance.

Q. Well, take the circumstances of the weather as it had been put to you in the questions heretofore, what would you say?

A. Well, the way the weather has been described to me, I do not think a man could hear that distance.

Q. Well, assuming that he could hear, what would you say as to the vigilance and competency of a lookout who failed to notify his superior officer of the collision between two vessels to windward of him for twenty-five minutes after it occurred?

A. Well, in that case I should say that he did not keep a very good lookout, if he did hear it.

Q. You are lying in Shilshoal Bay now, I understand, Captain? A. Yes, sir.

Q. Where are you lying?

A. I am lying in nine fathoms of water.

(Testimony of Captain Rederick Albion Hall Erratt.)

Q. Can you indicate on the chart here (referring to Claimant's Exhibit No. 12) about where it is?

A. Yes, I can give you pretty near (indicating on chart). Here is about where I think I am laying, down here (pointing) where I am to anchor.

Q. Indicate with a pencil on here, if you please.

A. About there (marking on chart).

Q. What is the name of your schooner?

A. The "Ethel Zane."

Q. Mark it with an "E." (Witness marks as requested.) How long have you been lying there, Captain?

A. I came in here on the 6th and I laid out there the 6th, 7th and 8th; then I went inside, took in part of my cargo and I towed out there Tuesday morning again.

Q. Are you lying at one anchor or two?

A. I am lying at the present time at two anchors.

Q. When you first went in there how many anchors did you lie to?

A. I had one anchor down first and I dropped the second one afterwards.

Q. How much later?

A. I dropped the second anchor, I think it was—I came to anchor there about twelve o'clock at night—between twelve and one, I think it was, and somewhere about two o'clock in the morning I dropped the second anchor under foot.

Q. Dropped your port anchor first?

(Testimony of Captain Rederick Albion Hall Erratt.)

A. Yes, I dropped the port anchor first.

Q. How much scope did you give the port anchor?

A. I gave her sixty fathoms.

Q. When you first dropped your anchor?

A. Yes, sir.

Q. How much scope did you give the second anchor? You just dropped that under foot, you say?

A. I just dropped that under foot.

Q. Then you were substantially lying at one anchor?

A. I dropped that for safety's safe in case she dragged I would have my other anchor down to bring her up with.

Q. And during the time you were lying there you let out sixty fathoms all the time?

A. When I towed out Tuesday, why, I let go my starboard anchor because it is the biggest anchor, and last night it came on to blow, about twelve o'clock last night it started in to get squally, I dropped my other anchor under foot and gave her a little more chain on the starboard anchor so as to have some scope on the port one. I think there is about eighty-five fathoms out on the starboard anchor now and there is a little over—well, there is about thirty fathoms on the port. That is the condition I left her in this morning and she has been in that condition since last night about midnight—between twelve and one o'clock it started in.

Q. Now, Captain, assuming that the wind is sou'west by sou'magnetic—that is about it—and you were to

(Testimony of Captain Roderick Albion Hall Erratt.)

come to anchor at the point indicated by the mark "R" upon this chart (referring to Claimant's Exhibit No. 12), with a vessel lying astern of you in the distance indicated there, your own vessel being over two hundred and fifty feet in length, as I think the testimony is: Under those circumstances would you have considered it advisable to have paid out sixty fathoms of chain when first coming to anchor?

A. Well, if I had room enough there, I would certainly give her sixty fathoms.

Q. If you did not have room enough, what would you do?

A. If I did not have room enough, why, I would never let go of my towboat?

Q. If you did not have room enough and you were obliged to drop anchor there, what would you do, would you give her sixty fathoms?

A. A man as long as he has got a towboat is not obliged to anchor.

Q. That is not the question; that is a question of law we will discuss afterwards, but I am assuming now that is the anchorage pointed out to him and he is compelled to anchor there; under the circumstances, the "Corona" lying as she did there, would you have given the "Rickmers" sixty fathoms of chain?

A. If I had no towboat there I would have given more chain.

Q. I understood you to say, then, that with a vessel

(Testimony of Captain Rederick Albion Hall Erratt.)

the size of the "Rickmers" lying here that you would have given her more chain? A. Yes.

Q. With the "Corona" lying astern of her as she did?

A. Yes.

Q. How much ought you to swing clear of the "Corona" under those circumstances, how much clear seaway ought there to have been between the stern of the "Rickmers" and the bow of the "Corona" in order to be safe?

A. Well, there ought to be room enough there to give her sixty fathoms of chain.

Q. That is not the question I asked you; sixty fathoms of chain seems to be a standard by which you judge things. A. No.

Q. But that is not the question. How much clear space ought there to have been between the stern of the "Rickmers" and the bow of the "Corona," how much would good seamanship require?

A. Well, good seamanship, why, of course the farther a man the more swinging room he can get, why, the better it is for him.

Q. What is the minimum?

A. Well, if the man can get a couple of hundred feet he ought to be safe enough.

Q. It ought not to be less than two hundred feet, then, I understand you to say?

A. Well, a hundred feet even would do—a hundred and fifty feet.

(Testimony of Captain Rederick Albion Hall Erratt.)

Q. A hundred and fifty feet would be ample, you think?

A. Yes. That is, if he had two hundred feet left between the two vessels when he first came to anchor he had room enough to give her enough chain to give her sixty fathoms of chain.

Q. Well, I am asking you now, and I wish you would answer this one question and no other, how much would good seamanship require that the distance should be between the stern of the "Rickmers" and the "Corona" at that anchorage at that time and place?

A. Well, it would depend upon a good deal—a good many circumstances. In good seamanship a man ought to have five or six hundred feet, at the least. I think I should want that much, in my judgment, and that a man hadn't ought to have any less than that.

Q. Now, I will ask you to make what measurements may be necessary for the purpose of answering this question and then to say to me whether in your opinion it would have been good seamanship for the "Rickmers" to have run out sixty fathoms of chain when she first came to anchor in the position which she did, the "Mildred" and the "Corona" being in the position indicated on that chart.

Mr. HUGHES.—I do not think we have any dividers, but it has been stated in evidence repeatedly that it was three-sixteenths of a mile, or 1142 feet, between the two ships.

(Testimony of Captain Rederick Albion Hall Erratt.)

Q. Now, assuming, as shown here in the evidence, that the length of the "Rickmers" exceeded 250 feet, what should you say as to the amount of chain that the "Rickmers" should have paid out?

A. Well, when he first came to anchor he had three-sixteenths of a mile, over 1100 feet—

Mr. HUGHES.—Eleven hundrd and forty-two feet.

A. (Continued.) Well, he had plenty of room to come to an anchor with sixty fathoms of chain.

Q. Now, Captain, when the "Rickmers" first brought up to her anchorage, you said, in answer to a question by Mr. Hughes, that, having come to the anchorage under the circumstances as put to you at that time, having clamped her chain upon the port compressor block, the block having split and carried away, so that the chain ran loose and some ten or fifteen fathoms of chain having run away, that good seamanship required that the "Rickmers" should overhaul her chain and take up her port anchor and examine it before dropping it again; is that correct?

A. He says that the towboat took hold of him before. If the towboat took hold of him again, as soon as the towboat got hold of him it was his place, I should think, to lift that anchor up and look at it to see whether it was foul or not. I think that is any master's place, to do such a thing, and I think if he did not do it, it was carelessness on his part. If he got into any scrapes through it, why it would be carelessness on the part of

(Testimony of Captain Rederick Albion Hall Erratt.)

the master in not ordering the mate to lift that anchor and look at it to see if it was not foul.

Q. What were the circumstances which would make it probable or possible that the anchor or the chain had been fouled? By the mere fact of the compressor block having carried away and the chain having run away for ten or fifteen fathoms?

A. That anchor might have got foul when they dropped it. Very often when you drop an anchor it will get foul in dropping it.

Q. The liability that it would be foul was not increased by the fact that the compressor block carried away, was it? A. No.

Q. Not in any way; then, how is a master ever to know that his anchor is not foul? I understand you to say that it fouls in dropping?

A. Yes, it is liable to foul in dropping the anchor.

Q. Well, if it is liable to foul in dropping the anchor, does good seamanship require the captain to hoist his anchor and look at it to see if it is foul?

A. No, it don't in a case where a man drops his anchor. He is supposed to be always on the lookout, and he can tell after a while whether that anchor is foul or not—he can judge pretty near whether it is foul or not. If it holds all right, why, he can say that anchor must be clear.

(Testimony of Captain Rederick Albion Hall Erratt.)

Redirect Examination.

Q. (Mr. HUGHES.) But if the ship drags?

A. Why, a man would think that his anchor is foul.

Q. Now, Captain, in coming to anchor in tow of a steamer, does the master or mate on the deck of the ship have a better opportunity than the master of the tug towing him to determine whether he has clear way between his ship and the other ships anchored about?

A. Why, certainly. The man that is aboard the ship, he ought to be able to see whether he is clear of the other ships better than the captain of the tugboat, because the captain of the towboat would naturally be ahead of him.

Q. Would it be proper, after casting off the line of the towboat to let your ship get sufficient sternway before putting out your anchor and making fast your riding chocks so that your riding chock would break?

Mr. KELLY.—That is objected to under the same objection as before, and particularly because it assumes a state of facts which is not supported by the evidence.

A. Well, he hadn't ought to have allowed his vessel to get too much sternway before he let go his anchor. As soon as he let go of his line on his towboat he ought to have dropped his anchor as soon as he saw the vessel stop her headway.

Q. Now, observe this chart again, Captain (referring to Claimant's Exhibit No. 12): If, when the "Rickmers" drifted down on to the "Mildred" and carried away her

(Testimony of Captain Rederick Albion Hall Erratt.)

jib-boom, the noise was not sufficient to be heard on board the "Corona," would you say it would be likely to be heard on board the "Stimson" on the same night—the same time?

Mr. KELLY.—The same objection that I made before to this question.

A. No, I don't think it could.

Q. And if the wind was blowing from 25 to 35 miles an hour, on a dark night, would the mere carrying away of the jib-boom of the "Mildred" be likely to be heard on board the "Stimson"?

A. I hardly think it could be heard that distance.

Q. Would the lookout on such a night be able to see that there was anything wrong there?

A. Well, he might be able to see that there was something wrong, but not able to tell what it was. He might not be able to make it out—make out the vessels—to tell whether they were foul on one another or not. He might think the vessels were swinging or something like that—had come close to one another.

Q. Now, would he be able to tell that the "Rickmers" was drifting, until she got pretty close to him on a dark, stormy night, the wind blowing like that?

A. Well, he could not tell until she got down half of that distance, anyway, I don't think. If he could make out the vessel plain enough, why, it would be a different thing; but a dark night, like that, why, it is deceiving. A man may run in on a tack close to the

(Testimony of Captain Rederick Albion Hall Erratt.)

beach, and he may think he is right on top of it, and at the same time he might be ten miles away from it.

Q. If the "Rickmers" were drifting down onto the "Stimson," under the conditions of wind and weather that I have described, which vessel would have the better opportunity to get clear of the other, the "Rickmers" or the "Stimson," if anything could be done in the way of using sails; that is, if the weather was such as to permit anything to be done in the way of using sails.

A. Well, if the vessel that was dragging knew that he was dragging, why, he ought to have tried to hoist some of his after sails, so as to swing his stern clear.

Q. Would he have a better opportunity than the "Stimson" would?

A. He would, because he would know himself that he was dragging, while the "Stimson" would not know—the other vessel would not know whether he was dragging or not, probably.

Recross-examination.

Q. (Mr. KELLY.) If the "Rickmers" had her riding lights burning in good order, it would have been comparatively easy for a lookout to have determined whether the ships were in difficulty or not, would it not?

A. Well, if it is a dark night, he might or he might not. As I say, it would depend a good deal upon the weather in that case. The man might think that the vessel was swinging.

(Testimony of Captain Rederick Albion Hall Erratt.)

Q. He could determine, could he not, whether the "Rickmers" was dragging if her riding lights were in good order?

A. If she came very fast he could tell that she was dragging, or something the matter there. If he saw that light coming and saw the light, why, he could see that there was something coming along there.

Q. A competent lookout and seaman would be able to detect that from the fact that he had a fixed light on West Point, would he not, and therefore a cross bearing between that light and the light of the vessel that was dragging and the fixed light on West Point would enable him to determine whether the vessel was dragging or not?

A. Well, he would not really need the light on the point there to tell whether the vessel was dragging or not. If he saw that light coming towards him, why, he could tell that way—if he saw the light coming.

Q. Captain, in coming to an anchorage, where a vessel is under pilotage and the captain of the vessel is unfamiliar with the waters, whose duty is it to pick out the anchorage? A. Why, it is the pilot's duty.

Q. (Mr. HUGHES.) Captain, whose duty is it to designate whether or not there is sufficient scope of anchorage between the ship coming to anchor and the other ships at anchor?

A. Whose duty would it be?

Q. Yes, sir, under those same circumstances.

(Testimony of Captain Rederick Albion Hall Erratt.)

A. Well, the captain can object to his anchorage; if he don't like it, he has the privilege of objecting to it and making the pilot take him to a different anchorage.

Q. And if, in coming in a place like this, the master of the ship felt that he had not sufficient scope between his ship and the other ships at anchor, to ride safely, what would be required the master of the tug to do?

A. Well, he could require the master of the tug to take him further ahead into a different anchorage.

Q. To give him more scope?

A. Give him more room to swing in.

(Testimony of witness closed.)

GEORGE N. SALYSBURY, recalled as a witness for and on behalf of libelants, in rebuttal, testified:

Q. (Mr. HUGHES.) You have testified before in this case, Mr. Salysbury? A. Yes, sir.

Mr. HUGHES.—I now offer in evidence a certified copy or transcript of the automatic wind velocity and direction record of the United States weather station at Seattle, duly certified by the Secretary of Agriculture.

(Copy referred to offered in evidence, marked for identification as Libelant's Exhibit "H," and returned and filed herewith.)

Q. You testified before that the automatic record made by the instruments in your office, that is, the original record, had been forwarded to Washington?

A. Exactly.

(Testimony of George N. Salysbury.)

Q. I will ask you if this is a copy of so much of the record as shows the record between the hours of four o'clock, local time, and twelve o'clock midnight, local time, on the 25th day of December, 1901?

A. Yes; this is a copy of the automatic record of wind velocity and direction at the city of Seattle, Washington, station, between the hours of four P. M., December 25th, and midnight, December 25th, 1901.

Q. I wish, Mr. Salysbury, you would interpret that chart; that is to say, examine the chart and state what was the wind velocity and the direction of the wind, commencing at four o'clock P. M. of that day and continuing until midnight.

A. Well, if I might, before answering that question, say that in my testimony formerly I gave the average velocity, not having this record before me, between the different hours, as stated at that time.

Q. Yes, sir; now, I want you to give the specific velocity. A. At any exact time?

Q. Yes, sir.

Q. (Mr. KELLY.) How often are these records read? Is this one of these cylinder records that take it from time to time, or is it taken at all the time?

A It is a continuous automatic record.

Q. (Mr. HUGHES.) Now, go on, commencing at four P. M.

A. Would you like the velocity at the exact time of four P. M.?

(Testimony of George N. Salysbury.)

Q. Yes, sir.

A. And at five and six and so on?

A. Yes, sir.

A. The velocity of the wind at four P. M. was fifteen miles per hour from the southeast; at five P. M. it was sixteen miles from the southeast.

Q. What was the highest velocity between those hours, four and five? A. Eighteen miles per hour.

Q. What changes of wind was there between those hours?

A. It was from southeast to south, a part of the time from the south—about one-half of the time from the south and about one-half of the time from the southeast; a few switches to the southwest for a minute at a time.

Q. What was the velocity at six P. M.?

A. At six P. M. the velocity was twelve miles an hour.

Q. What was the highest velocity between five and six?

A. I believe there was nothing higher than eighteen miles per hour between five and six.

Q. Give me the directions of the wind between five and six.

A. It was mostly from the southeast and some short intervals south and southwest.

Q. What was the velocity at seven P. M.?

A. At seven P. M. it was about fourteen miles per hour.

(Testimony of George N. Salysbury.)

Q. What was the highest velocity between six and seven?

A. The highest velocity was about sixteen miles.

Q. What were the directions of the wind?

A. The direction southeast, mostly, during that time.

Q. Give the variations, if any.

A. Well, at five to ten minutes past six it was from the south, and about eleven or twelve minutes past six there was one minute that it was from the southwest; at 6:35 it was from the south for two or three minutes, and at 6:41 there was one minute from the southwest.

Q. What was the velocity at eight?

A. At eight P. M. the velocity was twenty miles per hour.

Q. What was the highest velocity between seven and eight?

A. It was twenty-four miles and occurred at 7:50, and from the southeast, the direction was.

Q. How did the wind vary from seven to eight?

A. It was mostly from the southeast. There were two or three minutes from the southwest at 7:22; from 7:22 on to 7:25 there were about three minutes from the southwest.

Q. What was the velocity at nine P. M.?

A. It was about seventeen or eighteen miles per hour at nine P. M. from the southeast.

Q. What was the highest velocity between eight and nine?

(Testimony of George N. Salysbury.)

A. About twenty-one miles per hour from the southeast; that occurred at 8:50 P. M.

Q. What was the velocity at ten P. M.?

A. Eighteen miles per hour from the southeast.

Q. What was the highest velocity between nine and ten?

A. That would be about twenty or twenty-one—about twenty-one miles an hour, from the southeast, at 9:30.

Q. What directions did the wind blow from nine to ten?

A. Well, generally southeast; there were a few intervals of south and southwest.

Q. Now, Mr. Salisbury, I wish you would give the entire record between ten and eleven.

A. Well, at ten o'clock, as I said, the wind was eighteen miles from the southeast; it continued southeast during most of that time; at ten seventeen there was one minute from the southwest; there were a few minutes from the south during the next quarter of an hour; the velocity was increasing; it reached its maximum at 10:35.

Q. What was that?

A. That was twenty-two miles per hour.

Q. Proceed from 10:35 to 11.

A. Well, the wind was from southeast to south, a few minutes of southwest.

Q. At what time from the southwest?

(Testimony of George N. Salysbury.)

A. The most of the southwest occurred at just about that time of the maximum velocity.

Q. At 10:35?

A. At 10:35 to 10:45—10:35 to 10:40 was when the southwest occurred.

Q. Then after that, from 10:40 to 11, how did the wind blow?

A. Well, it diminished somewhat, so that at 11 o'clock —it diminished until just five minutes before 11.

Q. To what did it diminish five minutes before 11?

A. Twenty miles an hour. And then between five minutes before 11 and 11, it increased and became twenty-four miles an hour.

Q. At 11? A. At 11 o'clock.

Q. How was the wind blowing the last ten or fifteen minutes before?

A. Well, it was changing between southeast and southwest; part of the time southeast and part of the time south, and in that last five minutes before eleven two of the five minutes before eleven were recorded from the southwest.

Q. No, go on from eleven; at eleven o'clock you say the wind was what?

A. The wind was twenty-four miles per hour.

Q. State what it was from that on until twelve.

A. Well, during the next five minutes it was twenty-

(Testimony of George N. Salysbury.)

four; during the next about twenty-three and then twenty-four and died down during the next ten minutes.

Q. To what?

A. To about 20 miles an hour; increased again to twenty-four between 11:25 and 11:35, twenty-four miles; that was from the south to the southwest; between 11:25 and 11:30 the wind was mostly from the southwest and from there until midnight it was mostly from the southwest, increasing to a maximum velocity of thirty-three miles an hour between 11:35—no, between 11:32 and 11:40—with a maximum velocity of thirty-three miles per hour with an extreme of thirty-five miles an hour for one minute.

Q. At what time was the extreme of thirty-five miles per hour reached?

A. The time of the extreme thirty-five miles per hour for one minute was 11:38 to 11:39.

Q. How did it continue from then until midnight?

A. Somewhat diminishing velocity and somewhat irregular. During the five minutes from 11:40 until 11:45 it diminished to about twenty-three miles an hour, then increased to about thirty miles, and during the next five minutes, then during the following ten minutes of midnight there was an average velocity of about twenty-five miles per hour.

Cross-examination.

Q. (Mr. KELLY.) What direction do you record?

A. The true meridian.

(Testimony of George N. Salysbury.)

Q. That is, you take the compass bearing and make the correction of the variation?

A. The instrument is adjusted to the true meridian always, not the magnetic.

(Testimony of witness closed.)

Captain HENRY A. SMITH, a witness produced by libelant in rebuttal, having been first duly cautioned and sworn, testified:

Q. (Mr. HUGHES.) What is your full name?

A. Henry A. Smith.

Q. What is your business?

A. Master mariner.

Q. How long have you been a master mariner?

A. Twenty-eight years.

Q. And in what ship are you now?

A. The schooner "Maweema."

Q. How long have you been sailing in these waters?

A. I have been sailing here about eighteen years, and as master about sixteen or seventeen.

Q. Have you anchored frequently in Shilshoal Bay?

A. I have been there frequently, yes, sir; not within the last few years, but previous to four years ago.

Q. Now, Captain, on the afternoon of December 25th, 1901, the "Stimson" lay at anchor at the point indicated on this chart, Claimant's Exhibit No. 12, by the cross and the letter "S"; the "Corona" at the point indicated by the cross and the letter "C"; the "Mildred" at the

(Testimony of Captain Henry A. Smith.)

point indicated by the cross and the letter "M"; the bark "Rickmers," about four o'clock on that afternoon, was brought into a place of anchorage at approximately the point indicated by the cross and the letter "R"; she was brought there by the tug "Tacoma"; the wind was then blowing somewhere from fifteen to twenty-five miles an hour; she cast off her tow line and put out her port anchor; upon making fast her riding chock the block split and some ten or fifteen fathoms of chain ran out and she began to drag; she continued dragging until she came down opposite the schooner "Corona," where the tug overtook her and made fast. I will ask you to state, in the exercise of good seamanship, what the "Rickmers" should have done with her port anchor before being towed back to anchorage.

Mr. KELLY.—I interpose the same objection to this question as was interposed to the testimony of the preceding witness. With the understanding that the same objection runs to all the questions which are put to this witness I will not consume the time by repeating my objection after each question.

Mr. HUGHES.—Yes, that is understood.

A. In my opinion after the boat got hold of the ship again he should have hove his anchor up and sighted it to see whether it was foul or whether anything was wrong with it.

Q. I will ask you to state whether it would be good

(Testimony of Captain Henry A. Smith.)

seamanship for him to allow his anchor to remain on the bottom while he was being towed back to anchorage.

A. In my estimation, no.

Q. Why not?

A. Well, in the first place, he might foul his anchor; with that large boat towing his anchor he might foul it with something and break his chain or break a fluke or a stock—something like that.

Q. If he was towed back without lifting his anchor off the ground and brought to a position indicated by the cross at the letter "R," and thereupon cast out his starboard anchor, in what direction would his port anchor lie?

A. Do you mean at the time he let his starboard anchor go, or when he had paid out his chain on the starboard anchor?

Q. Well, assuming that he let go his starboard anchor and paid out thirty fathoms of chain.

A. With the wind from the southeast?

Q. With the wind from the south to the southeast.

A. Well, I should judge that his anchor must be trending aft, not directly in line with the vessel but quartering.

Q. What strain, if any, would come upon the port anchor with his starboard anchor out under those conditions?

A. Why, there would not be any strain upon it.

Q. What would you say as to the sufficiency of thirty

(Testimony of Captain Henry A. Smith.)

fathoms of chain to hold a ship, she being a twenty-two hundred tons register ship, 267 feet in length and in ballast? A. Very insufficient.

Q. Now, Captain, assuming that some time between ten and eleven o'clock that night he began to drag his anchor and drifted down on to the schooner "Mildred," striking its jib-boom and carrying it away and going right on; the wind shifting to the southwest in the course of his drifting he bears down to the schooner "Stimson"; the "Stimson" is lying with her full scope of chain, 105 fathoms and one anchor; what would you say, assuming that the wind is blowing at from 25 to 35 miles an hour, as the "Rickmers" is approaching, could be done by the schooner "Stimson" at that time of night, 11:30 to 11:40, to avoid collision?

A. The "Stimson" could not have done anything.

Q. Why not? Explain your reasons fully.

A. In the first place he is not sure that the ship is dragging; he does not know that; when he sees—if he learns that she is dragging, which he would not until she got well down towards the "Stimson," then he would not know whether the bark, the "Rickmers," was going to the starboard or to the port; assuming that he set a staysail there, allow him that he had time enough to set a staysail, perhaps he might have filled to the port, but she would only swing so far, then she would come back; he could not control the vessel in the least—on in the least; she would swing this way until her chain brought

(Testimony of Captain Henry A. Smith.)

her up; she could swing so far until the chain or the bight of the chain brought her up, then she would go the other way. In my opinion a man would make a great mistake in trying to avoid a collision in a case like that.

Cross-examination.

Q. (Mr. KELLY.) Captain, when a vessel is at anchor under circumstances of heavy wind and weather and a vessel to windward of her drags, the situation is precarious at its best, is it not? A. It is.

Q. It is a dangerous situation? A. Yes, sir.

Q. And the shipmaster is then justified in taking chances to avoid a collision which he would not take otherwise; is that true? A. Yes, that is right.

Q. Now, assuming that there were time and that the circumstances were such that it would have been possible for the "Stimson" to have made sail, either fore or aft, do I understand you to say that she would not have had a chance of escaping a collision by so doing?

A. I can't see that it was possible for her to do so.

Q. Now, assuming that it was—

A. You assume that it was possible?

Q. Assume that it was, yes, sir.

A. I would not do it.

Q. I am not asking you what you would do or what you would not do; I am asking you if she would not have had a better chance to escape the collision by making sail than she would by lying inert in the matter.

A. Why, I can't see that she would for the reason

(Testimony of Captain Henry A. Smith.)

that he can't control that vessel, after he sets that staysail, any more than he could before.

Q. Now, I understood you to say that a vigilant, competent and careful lookout—

A. Pardon me, you did not hear me say that.

Q. Well, I understood you to say that it was not possible for those on board the "Stimson" to have detected the fact that the "Rickmers" was dragging until she got halfway from the "Mildred" to where the "Stimson" lay at anchor; is that correct?

A. That is correct. They might not detect it so soon as that.

Q. Now, I will ask you if the lookout on the "Stimson," the anchor watch, had been competent, vigilant and careful, if he would not have detected, under the circumstances of wind, weather, anchorage and prior collisions that have been put to you, if such a lookout would not have detected that the vessels lying to windward of him were in trouble and that one of them was dragging at an earlier time than the time you have indicated?

A. It is doubtful if he would.

Q. I will now ask you, Captain, in what way the breaking of the compressor block added to the probability that either the port anchor or the port chain of the "Rickmers" had been fouled under the circumstances of the question which Mr. Hughes put to you?

A. Well, that is something that I do not understand.

(Testimony of Captain Henry A. Smith.)

is what this compressor block was. It is hard to answer that question, Mr. Kelly.

Q. Well, we will assume that the compressor block was equivalent to a riding chock; that is to say, Captain, forward of the windlass and in the wake of the hawse pipe there is a contrivance which rests upon a large wooden block and which has a device for clamping the chain so that the strain of the chain comes upon this riding block or bitt, whatever you may call it, or, as it has been called in the testimony heretofore, the compressor block—that is what I refer to there; now, assuming that the compressor block is of such a character, why, then answer the question, if you will.

A. I don't understand your question.

Q. The question is this: I asked you in what way the breaking of the compressor block, added to the probability that the port anchor or the port anchor chain had been fouled under the circumstances as detailed in the question which Mr. Hughes put to you.

A. I do not see as the breaking of the compressor block would add any chances to fouling the anchor.

Q. Or the chain?

A. Or the chain—the chain fouling the anchor.

Q. Then from what arises the necessity for taking that anchor to the surface and looking at it?

A. Because it might have parted when—as I understand it, the ship was going astern rapidly; if his compressor block parted, or, as I understand this device,

(Testimony of Captain Henry A. Smith.)

it is something that will not give in the least, there is no give to this, as I understand, this riding chock or it would not have carried away, would it? When that brought up so suddenly it might have carried away a fluke of the anchor, the stock, or something like that.

Q. Then your answer is based upon the assumption that the vessel was going astern rapidly at the time that her anchor was dropped and upon the further assumption that the anchor was dropped and she was brought up short on this compressor block?

A. It would seem so.

Redirect Examination.

Q. (Mr. HUGHES.) Captain, would the riding chock or compressor block—

A. That is something that I don't know, you see; I can't tell you exactly what that is. I am assuming that that is what we call a chain stopper; it is merely a heavy pawl that drops down on our chain like that (illustrating), and holds it independent of the compressor altogether; what we call a compressor is an iron band that goes around the wire cap and sets by a lever, but this riding chock, as you explain it, I assume it to be, as I stated, what we call a chain stopper.

Q. Now, Captain, assume that this device was one that made the chain fast just behind the hawse pipe and was intended to take the entire strain off the windlass and to hold the chain absolutely. If it was in

(Testimony of Captain Henry A. Smith.)

proper condition would it have broken unless an unusual strain had been put upon it?

A. Oh, no, no.

Q. Could the strain be sufficient with the wind blowing at, say, fifteen to twenty-five miles an hour, unless the vessel had attained considerable sternway before it took up the chain?

A. I should not think so.

Q. Now, Captain, aside from the chance of the fluke of the anchor being broken or some damage done to the anchor by the same strain which caused the compressor block to break or carry away, would there not be, also, a possibility that the chain itself might be damaged or cracked?

A. There is a possibility, indeed, yes.

Q. So you would say that as an added reason why it should have been taken up and sighted so as to see?

A. Yes, sir; sure.

Q. Would that likely be increased in the light of the fact that it was subsequently found that that anchor was in fact gone? A. Yes.

Q. Now, Captain, aside from the danger of damage to the chain or the anchor by the circumstances which carried away the compressor block, I will ask you, even assuming that nothing might have happened to either the chain or the anchor, whether or not after the ship had dragged her anchor for about three-sixteenths of a mile that would not be some evidence that the chain was probably foul? A. It would to me, yes.

(Testimony of Captain Henry A. Smith.)

Q. Would that afford an added reason why it should be taken up and inspected?

A. In fact it would; it would be a great reason to me. I should not feel satisfied without seeing my anchor in a case like that before I let it go again.

Recross-examination.

Q. (Mr. KELLY.) Just one question I overlooked. You spoke, Captain, of something which I did not understand relative to the position of these two anchors and the ship after she came to her permanent anchorage. Now, will you indicate on this piece of paper here, if you will please, what you meant by that?

A. (Witness sketches on paper.) Now, in order to do that, we will call this north—

Q. North coming towards you, you mean.

A. Yes. The ship has been going this way (showing) as I understand it. Now in towing up there the tug would tow that boat this way (showing)—the beach lies this way (showing) you see, the beach lies in this direction towards West Point; in towing this ship up there the boat would naturally take her like that (showing), wouldn't she? He would drop his anchor here, the port anchor is down here (showing), is it not? The port anchor has been dropped down here; he is taking the ship up now to another anchorage and has dropped an anchor here (showing); now then, when that ship comes to swing to this wind, with the wind from the southeast, she would be like this (showing and marking), she

(Testimony of Captain Henry A. Smith.)

would be tailing this way with thirty fathoms on this anchor, or whatever he has got on this port anchor here; the ship will now be lying here by this anchor, see? Like this (showing and marking on paper); now, there is the ship.

Q. Now, will you write "port anchor" opposite this one and "starboard" here. (Witness does as requested.) Now write here "Position of ship at 10:00 P. M."

Mr. HUGHES.—Oh, no, he does not say any time.

Q. Well, "Position of ship after she tailed up under southeast wind."

A. (Writing.) "Position of ship riding to starboard anchor," I will put it.

Mr. KELLY.—Now, we will offer this in evidence here as a part of the cross-examination of this witness.

(Paper referred to offered in evidence, marked for identification as Claimant's Exhibit No. 13, and filed and returned herewith.)

A. (Continuing.) Some of those lines there—there are two lines there, but there is one that should be erased, you know.

Q. Which one ought to be erased?

A. That should be erased, but this one here (pointing), I don't know but there should be a line from this anchor to the bow of this ship here.

Q. Just draw the right course there.

A. It would be like this (pointing and marking).

(Testimony of Captain Henry A. Smith.)

Now, as the tug towed that ship up, you see the chain would go this way, and as she dropped back it would come like that (showing and marking).

(Testimony of witness closed.)

And thereupon an adjournment was taken to two o'clock P. M., the same day.

Seattle, Washington, 2 P. M.,

Friday, February 19, 1904.

Present: The same as at the morning session.

Continuation of proceedings pursuant to adjournment as follows, to wit:

Captain CHRISTIAN PETERSON, recalled as a witness for libelant, testified:

Q. (Mr. HUGHES.) Captain, you are the master of the schooner "Stimson"? A. Yes, sir.

Q. And you were at the time of the collision between the "Rickmers" and the "Stimson"?

A. I was master of her at that time.

Q. Who was aboard of the ship at that time?

A. The mate, second mate, five sailors and a cook.

Q. How long had you been at anchor there?

A. I had been at anchor fifteen days.

Q. And what had you been doing during that time?

A. I had been loading lumber.

Q. What provision had you made for loading lumber with respect to your ship and your deckload?

(Testimony of Captain Christian Peterson.)

A. I had cleaned up the hold and took everything clear to stow lumber all over.

Q. Do you carry a deckload?

A. Yes, I carry a deckload of about thirteen or fourteen feet sometimes.

Q. Did you maintain a lookout on that ship?

A. Yes, sir.

Q. What was the name of the lookout on that night?

A. His name was Rasmussen.

Q. The night of December 25th?

A. The night of December 25th, yes, sir.

Q. What has become of him?

A. I don't know what became of him. He left when we came up in the bay here.

Q. That is, since the repairs to the ship?

A. I have not seen him since.

Q. Have you made inquiries about him since they began taking the testimony the last time in this case?

A. Yes, sir. I inquired of the Sailors' Union agent; he said he didn't know where he was.

Q. What has become of your first mate?

A. He is dead.

Q. What has become of your second mate?

A. He was lost on the schooner "Tallent"; she was lost on the South Seas.

Q. Have you any of the sailors who were with you at the time of this collision? A. No, sir.

Q. Who were on board ship at the time of the collision? A. No.

(Testimony of Captain Christian Peterson.)

Q. Do you know where they are?

A. No, I do not.

Q. How long have they been absent from the ship?

A. Some of them left when we came up here and commenced to load again on March 10th; some of them stayed that voyage and left at San Pedro.

Q. You had none of them for the last year and a half? A. No, sir.

Q. Do you know where they are?

A. No, I don't.

Q. Captain, some question has been made by the claimants in regard to the bills of expense of the "Stimson" incident to this collision. In what manner did you make up your accounts for the schooner's expenses and damages so far as the wages of the crew was concerned?

A. Well, I really didn't make up any statement to that effect, sir. I just paid off the crew and sent the bills in, you know, and the dates on which they left.

Q. The bills put in here ran from December 10th, did they? A. Yes.

Q. That is the time when you came to anchor and commenced loading? A. Yes.

Q. And the intention was in putting in the bills for the wages of the crew to carry the bills to March 10th.

A. To March 10th, yes, to the end of repair, rather.

Q. The end of repairs was the 25th of March.

A. Yes.

Q. That is to say all repairs were made and the car-

go in on the 25th of March to the same extent it was in on the 25th of December? A. Yes, sir.

Q. And your aim was to put in the wages of the crew so as to cut out the last fifteen days?

A. Yes.

Q. And you made up your statement by the month then running from the 10th of the month for December?

A. I remember I sent in the statement that I paid off the crew on the 10th.

Q. Now, in going over these bills you found that the bill of—

A. Well, now, that is the crew's bills; I don't know whether this would be charged up to the end of the repair or not, I am not certain about that, up to the end of March, to the 26th, that is, whether they should be charged up to March 10th or charged up to March 26th.

Q. Have you gone over these bills?

A. Yes, sir, I have been all over them.

Q. And have you picked out—

A. Yes, those that I am not certain of.

Q. And those are the bills for wages?

A. Those are the bills for wages.

Q. First, the bills of Victor Carlson, $5.60, bearing date March 14th; second, the bill of George Stedman, dated March 15th, for $14.20; of that bill the wages after March 10th and up to the 14th, you are in doubt about? A. Yes.

Q. But the balance of the wages would be chargeable anyhow? A. Yes.

(Testimony of Captain Christian Peterson.)

Q. To make up the full ninety days in any case?

A. Yes, sir.

Q. Also the bill of Theodore Harbest, dated March 26th, for $26.67, twenty days; that is the sixteen days of that time or fifteen days of that time you are not certain of.

A. No, sir.

Q. Also the bill of W. Pike, dated March 26th, for $26.67, for twenty days' services; the fifteen days of that time you are not certain of? A. Yes.

Q. The next is the bill of C. Berntson, dated March 14th, for $10.97, wages of eight days; there would be four days of that time you are not certain of? A. Yes.

Q. Now, there are certain charges for your own expenses from Blakely to Seattle that have been questioned. Was that rendered necessary by reason of this collision?

A. Yes.

Q. There is an item on your claim for a charge of $35 for filing saw in Blakely; is that correct?

A. No, it should be thirty-five cents.

Q. Is it so charged in the Blakely bill?

A. Yes—well, no, on the bill it was charged $35, but that is a mistake; I see that on the statement it is charged thirty-five cents.

Q. It is charged in our bills as thirty-five cents?

A. Yes.

Q. In reality in the total amount of our bills?

A. Yes.

(Testimony of Captain Christian Peterson.)

Q. And is it not charged up in the total amount of our bills as thirty-five dollars?

A. No, I don't think it is.

Q. I will ask you if you have gone over all these accounts? A. Yes, sir.

Q. With the exception of the corrections you have just made is there anything in them that was not necessary and proper as an expense arising on account of this collision? A. No, I don't see anything else.

Q. Captain, you are familiar with the character of the weather on the night of the 25th of December, 1901?

A. Yes, sir.

Q. Now, it is claimed that some time between eleven o'clock and 11:40, the latter being the time of the collision between the "Rickmers" and the "Stimson," the "Rickmers" drifted down and took off the jib-boom of the "Mildred" and then veering in her direction drifted on until she finally came down on the "Stimson." I will ask you to state what in your opinion could have been done, if anything, by the "Stimson" to avoid the collision?

Mr. KELLY.—I object to that question on the same grounds upon which the objection was made to the same question in the testimony of the previous witnesses.

A. Of course, I was not aboard, so I could not exactly say.

Q. Now, assuming that the wind was blowing at from twenty-five to thirty-five miles an hour during the time that the "Rickmers" was drifting, she was dragging her

(Testimony of Captain Christian Peterson.)

anchor, at least one of them had not been lost, and that anchor was dragging, assuming that it was dark and rainy, and about half-past eleven o'clock at night, and she finally did strike the "Stimson" on her starboard bow, coming on her stern; considering the condition and situation of the "Stimson," what, in your opinion, could have been done by those on board the "Stimson" to avoid the collision?

Mr. KELLY.—Same objection as before.

A. Well, I do not think there was time to do anything. I think the "Rickmers" was so close there was not time to do anything.

Q. So close before she would be discovered?

A. Yes.

Q. Do you think that anything with any safety could be done even if there had been time?

A. No, I think it would have been risky to do anything.

Q. Why?

A. Well, by hoisting the staysail that night we might have run into the "Rickmers"—the fore staysail.

Q. Would there also have been danger if she had taken the wind properly, would there have been danger of her swinging back in front of the "Rickmers," before the "Rickmers" would reach her?

Mr. KELLY.—That is a little bit leading, Mr. Hughes. Of course, I do not want to hamper the examination, but if the witness could state his own views, rather than the views of counsel, I would like it.

(Testimony of Captain Christian Peterson.)

A. Now, supposing we had time to hoist that staysail and haul the boom out to the starboard and the wind had filled the sail, the vessel would have swung to port, and as soon as the chain had been tight she would come right back to the other side. Now, supposing that the "Rickmers" had not come fast enough and passed us while we were over to port, we would surely have run into her when she came back on the starboard tack and we would have been solely to blame for running into the "Rickmers." That is my view of it.

Q. Captain, going back to another phase of the case upon which I think you were not examined before. The "Rickmers" after she first came to anchor split her compressor or riding chock and ten or fifteen fathoms of chain ran out, and then she dragged from her first position down nearly onto the "Corona," when she was overhauled by the tug and a line made fast from the tug upon the "Rickmers"; what, if anything, should the "Rickmers" have done with her anchor which was out, her port anchor, before having the tug tow her back?

A. Well, it would have been proper for him to heave his anchor up and see that it was clear.

Q. Why?

A. Well, so that he would know when he dropped it again that it would be able to hold him. He was not certain after she dragged that his anchor was clear.

Q. Would there be any question after a sufficient strain upon the ship to break the compressor block about the condition of his anchor or chain which would require

(Testimony of Captain Christian Peterson.)

an examination in the exercise of proper care and seamanship? A. Yes, after she dragged, I think so.

Q. Might a strain sufficient to break the riding chock prove sufficient to break the fluke of the anchor?

A. Yes, it might.

Q. Or stock? A. Yes.

Q. Or crack the chain? A. Yes.

Cross-examination.

Q. (Mr. KELLY.) Captain, do you base the necessity for a visual examination of the chain and of the anchor upon the fact that the "Rickmers" dragged?

A. Well, I don't think he had sufficient chain out, anyway.

Q. I am not referring to the quantity of chain that he had out, but you say that good seamanship would require an examination, a visual examination and sight at the anchor and chain because she had dragged?

A. Yes, sir.

Q. If there was nothing to indicate that the anchor had left the position, the ground, upon which it was first dropped, there would be no necessity, would there?

A. No.

Q. There was nothing about the breaking of the compressor block in itself, the mere fact that this riding chock had proved insufficient, which would make it necessary to look at the anchor or the chain?

A. No, but I understood the anchor broke out at the

(Testimony of Captain Christian Peterson.)

bottom so there must have been something wrong down near the anchor.

Q. And that was the reason for—

A. For lifting the anchor as soon as he had an opportunity to do so.

Q. Now, Captain, you were not on board at the time of this collision? A. No.

Q. You were in Seattle, or in Ballard?

A. No, I was in Ballard.

Q. Did you pay any attention to the weather conditions that night? A. Yes, it was blowing hard.

Q. How late were you up?

A. Oh, I was up until ten o'clock.

Q. Up until ten? A. Yes.

Q. Did you go to bed about ten?

A. Yes, about ten o'clock.

Q. Who did you leave the "Stimson" in charge of?

A. The mate.

Q. The first mate? A. The first mate.

Q. He was on board, of course?

A. He was on board, yes.

Q. Who placed the anchor watch?

A. Well, the mate did; that is, I instructed him to put a man at the watch.

Q. Do you know of your own knowledge whether he did place such a man? A. Yes, I am sure of it.

Q. Do you know the man?

A. No, I don't know as I do.

(Testimony of Captain Christian Peterson.)

Q. I understood you to say that this man left the "Stimson" while she was still at Ballard?

A. No, after we came up here to Seattle and had discovered the cargo.

Q. That was shortly after the collision?

A. Shortly after. It was either here in Seattle or over in Blakely, I don't know which.

Q. Did he leave or was he discharged?

A. He left on his own account.

Q. Without any request from you or anyone else?

A. Yes, sir.

Q. Do you know whether that is the fact or not of your own knowledge?

A. Yes; he came and told me he wanted to quit; to get a man in his place.

Q. Now, at the time of this collision, I understand you to say that under the circumstances as they have been detailed to you and as you know them, that in your opinion it was not possible for the "Stimson" to do anything to avoid this collision? A. No, I think not.

Q. When a vessel in heavy weather under the conditions which have been described to you is to windward of a vessel at anchor and the first vessel begins to drag, comes in collision with the second vessel and has lost her holding ground, so that she is dragging, the condition and the position is a precarious one, is it not?

A. Yes.

Q. And a position in which both the dragging vessel

(Testimony of Captain Christian Peterson.)

and the vessel which is in danger at anchor should be watchful? A. Yes, sir.

Q. And should take every precaution?

A. Yes, sir.

Q. And every method of avoiding the threatened danger, should she not? A. Yes.

Q. Whose duty is it to take the steps on board the anchored vessel under those circumstances which may seem advisable?

A. Well, it is the duty of both sides.

Q. It is the duty on both sides? A. Yes.

Q. Now, I am talking to you about the duty on board the anchored vessel; whose duty is it to direct what steps should be taken?

A. Well, it is the officer having charge of the vessel.

Q. Whose duty is to inform the officer in command of the vessel at that time of the threatened danger?

A. Well, it would be the watchman in this case.

Q. Of what do the watchman's duty consist when a vessel lies at anchor under those circumstances?

A. Well, he is to look out for all danger, to see that the riding lights are burning brightly and see that the vessel don't drag; if any danger comes up it is his duty to call the mate—to call the first mate.

Q. Is it his duty to call the first mate when *anything* unusual occurs? A. Yes, sir.

Q. And it is not his duty to determine what should be done? A. No.

Q. Or what should not be done? A. No.

(Testimony of Captain Christian Peterson.)

Q. Or what can be done? A. No.

Q. Or what cannot be done?

A. No, I don't think so.

Q. Is it not the duty of the lookout?

A. Unless he is all alone on board.

Q. Well, then he would be in command, would he not?

A. Yes.

Q. What would you say of the act of a lookout who knew or might have known, if he had been watching, that a vessel lying within half a mile of him and to windward had dragged and had come into collision with another vessel lying substantially a half mile to windward of him who did not report the happening of this occurrence for at least twenty-five minutes afterwards?

A. Well, maybe he didn't see it, sir, maybe he didn't know it.

Q. Yes, but assuming that he did see it, or know it or should have seen or known it, what should you say?

A. Well, he surely would have reported if he had known of it.

Q. It was his duty to have reported it then, was it not? A. Yes, if he had known.

Q. Now, assuming that he had so reported it, that he had reported this condition of affairs, this dragging of one vessel down upon another and a collision occurring to the windward of his own vessel, under those circumstances of wind and weather, how far prior to the time that his own vessel was threatened with immediate danger do I understand you to say, Captain, as a seafaring man, that

(Testimony of Captain Christian Peterson.)

there were no steps that could then have been taken to avoid the collision?

A. Well, I don't know; surely he did not see she was in collision with the "Mildred."

Q. Well, suppose he had seen it; suppose he had seen it—suppose now—assume—that the watchman on board the "Stimson" had seen that the "Rickmers" was dragging and assume that he heard and saw that the "Rickmers" or some other vessel was in collision with the "Mildred" or some other vessel to windward of him, and assume that he had promptly reported those facts to his commanding officer; under those circumstances do I understand you to say that in your opinion there was no step which the "Stimson" could have taken to avoid the threatening collision?

A. Well, if he had had time to slip the chain and get away from there, that might have been the only chance that he could have had.

Q. His only chance in your mind was to slip the chain and get away from there?

A. Yes. They don't always take time to go to the shackles and unshackle the chain.

Q. It is a fact, is it not, that by getting head sail or stern sail upon a vessel lying at anchor at 105 fathoms scope of chain that the vessel can be steered from one side to another by maneuvering those sails?

A. Yes, sir.

Q. That is a fact? A. Yes, sir.

(Testimony of Captain Christian Peterson.)

Q. And it is a fact also, that in case of a fore and aft rig—schooner rig—that the head sail, fore staysail or the spanker, if it is a stern sail, will have no effect upon the vessel until such a sail is trimmed, is it not?

A. Yes.

Q. That is, if her sheets are allowed to—

A. If she is lying in a wind, yes.

Q. Now, Captain, if such a sail had been hoisted there, a fore staysail or a spanker upon the "Stimson" and the crew of the "Stimson" had been on deck ready to handle the sails under the orders of the mate it would have been possible to steer that vessel by skillful seamanship, would it not, either to the one side or the other?

A. Yes, it would have been, but you could not hold her there.

Q. All right, but she could have been veered, could she not?

A. She could be veered, but you could not hold her. We will say for instance, this is the "Stimson," this is the chain (showing); now we will veer her over to the side, then this chain will stand in this direction until it is taut, then the stern will swing and she will tail from that chain until the wind will come around the other side and she will come back this way (showing), and she will sheer over too much over there.

Q. I understand that, but—

(Testimony of Captain Christian Peterson.)

A. For that reason, I think there would be danger—for instance, the "Rickmers" had come down this side (showing), and we had come to this side; we would have had a terrible collision there. I don't think I should have attempted it if I had been there. If there had been any way of holding the vessel over to one side, but you can't do that, not when she is lying at an anchor.

Q. Now, Captain, if as we have assumed, the crew of the "Stimson" were on deck and the fore staysail or the spanker sail hoisted, but not trimmed, it would have been possible to have veered that ship in a timely way as the "Rickmers" drifted down upon her so as to have cleared the "Rickmers," would it not, if the movement had been timely?

A. Well, now, in a gale of wind like that we could not have the sails hanging up amidships there because they would slat all to pieces; it is all right enough to have it in a calm or light wind, to have the sails hanging like that, but we can't have them that way in a gale of wind; they would not last for five minutes, unless there is wind in them.

Q. I understand you to say, then, the movement could not have been timed so as to—

A. No, I don't think it could have been timed.

Q. That is your opinion? A. Yes.

Q. And even under circumstances where the collision was inevitable unless some step was taken you

(Testimony of Captain Christian Peterson.)

would not have thought it good seamanship to try to maneuver? A. No, I think not.

Q. How much of a cargo does the "Stimson" carry of lumber?

A. She carries about nine hundred thousand, at an average, nine hundred and fifty thousand—something like that.

Q. How much of that is deck load?

A. Well, about half of it.

Q. She is four-masted schooner, is she not?

A. She is a four-masted schooner, yes, sir.

Q. How much of a house has she aft?

A. Her house is—I think it is thirty-nine feet.

Q. And how high is it?

A. It is about eight feet from the deck.

Q. Where does your jigger mast, as you call it, come with reference to the house—the after-house?

A. It stands right down through the poop; we have got a poop about four feet above the deck and then there is a house comes up about four feet above that again and goes aft and the jigger mast is standing pretty well down towards the poop.

Q. Pretty well towards the fore end of the house then?

A. Pretty well towards the fore end of the house.

Q. How much of a deck load do you carry back of the jigger mast?

(Testimony of Captain Christian Peterson.)

A. Well, we run it right back to the middle—almost back to the wheel.

Q. How much above the deck?

A. Oh, I should think about five or six feet.

Q. Did you have any deck load on board the night of this collision?

A. We had the cargo a little above the rail.

Q. Did you have any on the after house?

A. No.

Q. None at all? A. No.

Q. And there was no cargo there which would interfere with the hoisting or the maneuvering of the spanking?

A. No, only the halyards were over on the pin rail.

Q. In the charges which you have made in the bills for the wages of the crew and so forth you have included there all of the disbursements which were made for periods between the 10th of December and the 25th of December, have you not? A. Yes, sir.

Q. And those would in round numbers be something like $275 or $300—something of that kind?

A. I do not remember.

Q. Now, Captain, you have examined these vouchers of the expenses of the "Stimson" caused by this collision? A. Yes, sir.

Q. Examined them with some care? A. Yes.

Q. You have examined the items? A. Yes.

Q. And with the exception of the few items which

(Testimony of Captain Christian Peterson.)

you testified to in your direct examination all of these charges arise out of and became necessary because of the collision? A. Yes, sir.

Q. These repairs were completed on what date?

A. March 25th.

Q. Did you not testify in your direct examination that the repairs were completed March 10th?

A. Yes, but we were not all ready then, the riggers were not ready, the riggers were not ready until March 25th.

Q. Then all the repairs which were completed on March 10th, you mean, were—

A. Well, I mean the carpenter work and as far as the sailors' wages were concerned—everything except the riggers and the loading of the cargo that we took out of the vessel.

Q. Now, taking this bill of the Port Blakely Mill Company, dated March 7, taking these items as they occur, will you state to me how the buying of stovepipe and repairs to the bottom of the galley sink were made necessary by this collision?

A. No, not the galley sink. Where is the galley sink?

Q. Right here (showing on bill), "Repairing bottom of galley sink."

A. Well, that should not be there, that galley sink, but this here broken up aft, that is, the stovepipe aft, and the deck iron—I don't know whether there is deck

(Testimony of Captain Christian Peterson.)

iron on here or not—no, I guess it must be somewheres else—but it was all broken up aft; the boom was unshipped and came down and broke up stovepipe and deck iron and everything else right aft there.

Q. And this dollar and a half for stovepipe is for the repair of that smokestack and so forth?

A. Yes, sir.

Q. You are sure of that?

A. Yes, sir, I am sure of that.

Q. Here is a bill for $2.50 for medical services to a sailor who was signed on February 17th; how was that occasioned?

A. That was by heaving up the fore top mast; that was all his carelessness; he held his head over the lubricator and I don't know whether it was on the lubricator or not, but the oil flew up in his face.

Q. You think that was on account of the collision?

A. I think so, because that was heaving up the topmast.

Q. You think this man got injured on account of the collision?

A. It was on account of that injury, anyhow.

Q. Now, taking the store bill of the Port Blakely Mill Company; I wish you would run over this bill and point out the items which were incurred because of this collision and the items which ordinarily are considered ship's stores, the general ship's stores which a ship requires in order to put to sea?

(Testimony of Captain Christian Peterson.)

A. Well, these was used while we were laying in port over there.

Q. All of them were used? A. Yes.

Q. You took none of these to sea, did you?

A. No. Schwabacker's bill is there for the stuff we took to sea with us.

Q. This bill is dated March 6th.

A. Yes, that was about the time we left over there, I think.

Q. And all of the material and all of the goods making up these several items were all used on board the ship? A. Yes, sir.

Q. Prior to the time you left Port Blakely?

A. Yes, sir.

Q. Where did you buy your sea stores when you put to sea? A. Bought them of Schwabacker's.

Q. You did not buy any sea stores from the Port Blakely Mill Company? A. No, I think not.

Q. Is Schwabacker's bill in as one of the vouchers?

A. Yes, I think I saw one of them.

Q. Will you find it, please. (Witness produces paper.) Is that your bill for sea stores which you bought prior to going to sea? A. I think so, yes, sir.

Q. Those were all the store that you bought?

A. Yes, I guess it is.

Q. At that time? A. Yes.

Q. And this bill of Schwabacker Bros., dated March 11, Libelant's Exhibit "F20" is made up substantially

(Testimony of Captain Christian Peterson.)

of the sea stores which you bought just before you sailed after the repairs? A. Yes, sir.

Redirect Examination.

Q. (Mr. HUGHES.) I will ask you, Captain, if at the time of the collision you had the equivalent of this bill on ship that was used during the period of repairs?

Mr. KELLY.—I object to that question as incompetent, irrelevant and immaterial.

A. Yes.

Q. And does this bill include anything more than the amount of stores actually used by your crew during the period that you were delayed by reason of the collision?

Mr. KELLY.—I make the same objection as above.

A. No; that is about the same thing because it was a trip to San Pedro and it may be a few pounds more or less, I could not exactly swear to that.

(Testimony of witness closed.)

And thereupon proctors for the respective parties announce that they had more testimony to offer.

Testimony closed.

[Title of Court and Cause.]

Commissioner's Certificate.

I, M. L. Clifford, United State Commissioner for the District of Washington at Tacoma, do hereby certify:

That the annexed and foregoing is a true and complete record and transcript of the proceedings had and the testimony taken before me in the above-entitled cause.

That the said testimony was taken and said proceedings had at the time and place and in the manner therein specified.

That each of the witnesses therein named, before examination, was duly sworn according to law to testify the truth, the whole truth and nothing but the truth, concerning the matter in issue.

That the signatures of the several witnesses to their testimony was duly waived by the parties, the said testimony of said witnesses to be received on the trial of said cause with the same force and effect as if signed by said witnesses respectively.

That the several exhibits offered by the libelant and the respondent herein as filed and marked by me, are returned herewith.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 31st day of March, A. D. 1904.

M. L. CLIFFORD,
United States Commissioner.

[Title of Court and Cause.]

Commissioner's Fee Bill.

The Stimson Mill Company, Libelant, to M. L. Clifford, United State Commissioner, Dr.

....

To 732 folios of testimony (original) at 10 cts. per folio..... ... .$ 73.20

Received payment in full for libelant, this 16th day of May, 1904.

M. L. CLIFFORD,
United States Commissioner.

[Title of Court and Cause.]

Commissioner's Fee Bill.

The German Bark "Robert Rickmers," Respondent, to M. L. Clifford, United States Commissioner, Dr.

....

To 2 days at $3.00 per day..... .....$ 6.00
To swearing 14 witnesses to testify, at 10 cts. each 1.40
To 771½ folios of testimony, at 10 cts. per folio 77.15

Total Commissioner's fees, $84.55

Received payment in full from respondent, this 17th day of May, 1904.

M. L. CLIFFORD,
United States Commissioner.

[Title of Court and Cause.]

Opinion.

(Filed July 22d, 1904.)

Suit in rem, to recover damages for injuries inflicted upon a vessel at anchor by another vessel dragging her anchor in a gale. Heard on the merits. Payment of damages decreed on the ground that the drifting vessel was in fault for not being more securely moored.

HUGHES, McMICKEN, DOVELL & RAMSEY, Proctors for Libelants.

JAMES M. ASHTON, Proctor for Respondent.

HANFORD, District Judge:

This is a suit in rem to recover damages for the injuries to the four-masted schooner "Stimson," caused by the German bark "Rickmers." The locality of the mishap is that part of the waters of Puget Sound designated on the charts as "Shilshoal Bay, on which the city of Ballard is located. The bay, so-called, is formed by a mere curvature of the eastern shore of Puget Sound, and is more of an open roadstead than a sheltered harbor, but the depth of water and material of the bottom afford good anchorage and plenty of room for a large number of vessels to lie at anchor with sufficient lengths of cables for safety. The time of the mishap was about 11 o'clock P. M., December 25, 1901, the night being dark but clear and the weather was tempestuous; that is to say, there was a high wind, which,

during the night and day previous, came in gusts of varying force, and varying in direction from southwest to southeast. The "Stimson" is a large four-masted schooner of approximately 700 tons burden, and at the time referred to was partly loaded with a cargo of lumber, and was at anchor about five-eighths of a mile offshore, and held securely by one anchor with 105 fathoms of chain, the depth of water at that place being approximately 27 fathoms. The schooner "Mildred," and the schooner "Corona" were also anchored in the bay about half a mile southward from the "Stimson," and a little less than one-quarter of a mile from each other, the "Mildred" being furthest off shore, and both the "Stimson" and the "Mildred" were to the westward of a line drawn straight from West Point to Meadow Point, which are the headlands of the so-called bay, so that both vessels were outside of Shilshoal Bay, in the open waters of Puget Sound. The "Rickmers," a German bark of about 2,200 tons burden, on the afternoon previous to the accident, while being towed to Tacoma in ballast, was brought into the bay for anchorage, on account of a strong head wind, and taken to a position a little less than a quarter of a mile to the eastward and inshore from the "Mildred," and about the same distance southwest from the "Corona," where she dropped her port anchor, in fourteen fathoms of water, and paid out about forty fathoms of cable. Instead of fetching up properly and being held by her anchor, her compressor—which is a contrivance for clutching the anchor chain to ease the stain upon the windlass--broke, and

ten or more fathoms of additional chain was paid out from the windlass, and the vessel drifted towards the schooner "Corona," and into dangerous proximity, so that a collision with her was imminent. The latter vessel was maneuvered by use of her sails in a manner to assist in avoiding a collision. The tug again attached her tow line to the "Rickmers," and pulled her back to very nearly the position first selected for anchorage, without lifting her port anchor. The "Rickmers'" starboard anchor was then dropped, with about thirty fathoms of cable, and she was left in that position by the tugboat. Line connecting the positions of the "Rickmers," "Mildred" and "Stimson" upon the chart form an isosceles triangle, the "Rickmers" and "Mildred" being at the two ends of the base, or short line of the triangle, and each of them being proximately half a mile southward from the "Stimson." At 10 P. M., the wind was blowing a gale from the southeast, and the force thereof caused the "Rickmers" to drag her anchors, and drift towards the "Mildred," and she actually came into collision with the jib-boom of that vessel, doing some damage, and then continued drifting, and sheered to the northward towards the "Stimson." After getting clear of the "Mildred" it was discovered that the "Rickmers" had lost her port anchor, and then more anchor chain was payed out to the starboard anchor, until the total length of cable on her starboard anchor was ninety fathoms. She continued to drag anchor, and drifted northward until she came into collision with the "Stimson," and locked with her, and both vessels dragged

their anchors and were driven northward several miles before they were separated, and by the collision the "Stimson" suffered the injuries for which damages are claimed in this suit.

The respondent defends on two grounds, viz.: First the casualty was an inevitable consequence of the extreme violence of the storm, and the "Rickmers" was blameless; second, the "Stimson" was herself in fault because her captain was ashore and she did not have a vigilant lookout, and neglected to attempt any maneuver to avoid the collision. In support of both of these defenses testimony of expert witnesses has been introduced.

I feel obliged to treat these defenses seriously, because able and experienced counsel has argued the propositions earnestly and with great ingenuity.

I will dispose of the second proposition first, and in this connection I find that the "Stimson" was securely anchored at a place where she had a lawful right to be; that the officers and crew on board at the time of the accident were competent to take proper care of a vessel at anchor, the regulation anchor light was set and a vigilant watch was kept. While the storm prevailed, she depended for safety upon her anchor, which proved to be sufficient to keep her in her place until the added weight of the "Rickmers" caused her to drag. She was not under any legal or moral obligation to adandon the security which her anchor afforded merely because a strange vessel had come into her vicinity. The duties of a captain do not require him to remain on board a

vessel constantly while she is at anchor, and there is no reason to suppose that the casualty could have been averted by the "Stimson's" captain if he had been on board. The captain of the "Rickmers," in his testimony, blames the "Stimson" for failure to put her helm hard-a-starboard. He appears to think if that had been done, the collision would not have happened. It is my understanding that a vessel cannot be made to change her position by use of her helm when she does not have steerageway, and the testimony of the captain does not directly controvert this principle of natural philosophy, nor does he assign any reasons for supposing that if the "Stimson's helm had been put hard-a-starboard it would have had any effect either to check or change the movements of the "Rickmers." The argument in behalf of the respondent, based upon testimony of expert witnesses, assumes that it would have been possible for the "Stimson" to have used her sails in a manner to have forced her to swing on her cable in shore, so that the "Rickmers" might have passed without colliding. This, however, is only a suggestion of a mere possibility. To be fair, the "Stimson" cannot be convicted of a fault upon any theory which ignores the obvious hazard of any attempt to set her sails at a time when the wind was blowing with such force as to drive the "Rickmers," without sails, and against the resistance of her anchors. If the "Stimson's" sails had been set and filled for the purpose of changing her position while the gale continued, in which direction would she have moved, and where would she have fetched up? Unless an intelli-

gent answer to this inquiry can be given, there can be no basis whatever for supposing that the "Stimson" could have changed her position without increasing instead of diminishing the danger to whch she was exposed. In the argument, the action of the "Corona" is instanced, and it is said that equal viligance and skill on board the "Stimson" would have kept her out of the path of the "Rickmers." There are differences, however, which I am bound to notice, differences both in direction and velocity of the wind. The position of the "Rickmers" when she commenced to drift, after dropping her anchor the first time, was southwest of the "Corona," and the wind at that time was from the west or southwest, and its velocity was only ten miles per hour. The "Corona" could very well, under those conditions, be moved a short distance without any imprudence. That event was at about 5 o'clock P. M. At 11 o'clock, when the "Rickmers" made trouble for the "Stimson," the wind had increased to thirty-five miles per hour, and was coming offshore from the southeast, the "Rickmers" had dragged her anchor westward one-fourth of a mile, when she came into collision with the "Mildred," and her position there was a little west of south from the "Stimson," and, as I have before indicated, the distance was half a mile. If her movements could have been observed in the darkness, they indicated nothing as to her course, except that she was not under control. Therefore, the "Stimson" could not execute any movement to get out of her way which would not be as likely to

bring the two vessels into collision as to avoid a collision.

Recurring, now to the main question in the case, which is, whether the "Rickmers" was in fault, I will say, preliminarily, that the "Stimson" being entirely free from blame, and the "Rickmers" being the aggressor, there is a natural and legal presumption that the damage which she caused was due to her fault, and to be entitled to exemption from liability she must prove good seamanship in her management and that her ground tackle was in condition fit for the service required so that there was no imprudence in releasing the tug and trusting her anchors in view of the existing conditions. The natural presumption is strengthened in this case by the indisputable fact that the other vessels exposed to the same force were held securely by their anchors, proving that if the "Rickmers" had been equipped with suitable anchors for a vessel of her size, and with sound cables with sufficient strength, and if she had been carefully moored, by placing her anchors properly, so as to have secured the advantage of their combined holding power, with sufficient length of chains and room to swing without coming in contact with the other vessels, she, too, would have withstood the storm without damage; but, instead of behaving as other vessels in the bay behaved, the "Rickmers" acted like an evil sprite, first making a hostile demonstration towards the "Corona," which frightened that little craft into making extraordinary maneuvers, later striking out to the westward, breaking the "Mildred's" nose, and then rushing

north to embrace the "Stimson," and wildly dancing with her to the music of the hurricane for a distance of seven or eight miles. I can admire, although I cannot adopt, the ingenious theories of the expert witnesses by which they exculpate the "Rickmers" from all blame, and also condemn the "Stimson" for not being sufficiently alert and nimble to keep out of the reach of the impetuous stranger. The word "expert" appears to be peculiarly apt and appropriate for describing the testimony upon which the respondent relies. Considering the threatening weather when the "Rickmers" came into the bay, and the unbroken sweep of the wind, with the exception of the little protection afforded by Magnolia Bluff, a careful navigator would have chosen a position for anchorage which would have enabled his vessel to swing with ample scope of cable without danger of colliding with other vessels previously anchored in the bay. The excuse offered for not paying out more cable than forty fathoms on the port anchor, and thirty fathoms on the starboard anchor, was that greater length of chain would have caused the "Rickmers" to swing dangerously near the "Mildred" and the "Corona." This proves that inexcusable error was committed in choosing the place of anchoring, and the captain of the "Rickmers" in his testimony claims that he was not satisfied with the location, but dropped anchor at the place indicated by the captain of the tug, who it is insisted must be held responsible as a local pilot. This, however, does not relieve the "Rickmers" from legal liability. She is answerable for damages caused by the inexcusable er-

rors of whoever for the time being had control of her movements, whether in the capacity of master, chief mate, or local pilot. Homer Ramsdell Transportation Co. vs. La Compagnie Generale Transatlantique, 182 U. S. 406, 21 Sup. Ct. 831, 45 L. Ed. 1155; The China vs. Walsh, 7 Wall. 53, 19 L. Ed. 67; The Merrimac, 14 Wall. 199; Ralli vs. Troop, 157 U. S. 386, 15 Sup. Ct. 657, 39 L. Ed. 742; The John G. Stevens, 170 U. S. 113, 18 Sup. Ct. 544, 42 L. Ed. 969; The Barnstable, 181 U. S. 464, 21 Sup. Ct. 684, 45 L. Ed. 954; Harrison vs. Hughs, 125 Fed. Rep. 860.

From the evidence I find that the actual damages to "Stimson" legitimately chargeable to the collision amount to the aggregate sum of $18,680.00, for which amount, with interest and costs, a decree will be given in favor of the libelant. In this amount there is included $9,388.00 for expenses paid for repairs, and for unloading and reloading, and necessary expenses of the ship during seventy-four days of detention; $5,000.00 for estimated permanent damage by impairment of the salable value of the ship, and $4,292.00 for demurrage at the rate of $58.00 per day for seventy-four days.

C. H. HANFORD,

Judge.

[Endorsed]: Filed in the U. S. District Court. Jul. 22, 1904. R. M. Hopkins, Clerk. Saml. D. Bridges, Deputy.

[Title of Court and Cause.]

Motion for Rehearing.

Now comes the claimant in the above-entitled cause and respectfully moves the Court for an order granting a rehearing thereof, for the reason that the Court appears to the claimant to be in error in finding for the libelant and particularly in finding for the libelant in the sum of $5,000.00 for estimated permanent damage by impairment of the salable value of libelant's ship, and in the sum of $4,292.00 for demurrage, at the rate of $58.00 per day for seventy-four days.

J. M. ASHTON,
Proctor for Claimant.

The receipt of a copy of the within and foregoing motion is hereby acknowledged this 9th day of August, 1904.

HUGHES, McMICKEN, DOVELL & RAMSEY,
Proctors for Libelant.

[Endorsed]: Filed Aug. 12th, 1904. R. M. Hopkins, Clerk. By A. Reeves Ayres, Deputy.

[Title of Court and Cause.]

Order Overruling Motion for Rehearing.

The motion for a rehearing herein and the grounds urged in support thereof having been fully argued by counsel upon the 26th day of October, 1904, and taken under advisement until this date.